THE HIGH COURT OF ORISSA: CUTTACK

No. XI-16/2025/.....10160(30)...../ Dtd.....19/6/2025.....

From;

Asanta Kumar Das,
Registrar General

To,

The District & Sessions Judge,..... (All)

Sub: **Forwarding of Judgment dated 24th March, 2025 passed in Civil Appeal No. 4311 of 2025 (arising out of SLP(C) No. 3324 of 2025) titled "Yerikala Sunkalamma & Anr. Vrs. The State of Andhra Pradesh & Ors." by the Hon'ble Supreme Court of India**

Sir,

With reference to the subject cited above, I am directed to forward herewith a copy of the Judgment dated 24th March, 2025 passed in Civil Appeal No. 4311 of 2025 (arising out of SLP(C) No. 3324 of 2025) titled "Yerikala Sunkalamma & Anr. Vrs. The State of Andhra Pradesh & Ors." by the Hon'ble Supreme Court of India for your information and to request you to communicate the same to all the Judicial Officers working in your judgeship for their information and necessary guidance, with particular emphasis on the observations made by the Hon'ble Supreme Court regarding Section 80 CPC.

Yours faithfully,

ASANTA KUMAR DAS Digitally signed by ASANTA KUMAR DAS Date: 2025.06.19 14:10:43 +05'30'

REGISTRAR GENERAL

Encl.: As above.

Memo No.....10161...../ Dtd.....19/06/2025.....

Copy forwarded to the Addl. Chief Secretary to Govt. of Odisha, Home Dept., Bhubaneswar for information with a request to communicate the same to all concerned for their information and strict adherence, drawing specific attention to the directives concerning Section 80 CPC.

ASANTA KUMAR DAS Digitally signed by ASANTA KUMAR DAS Date: 2025.06.19 14:11:17 +05'30'

REGISTRAR GENERAL

2025 INSC 383

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4311 OF 2025
(ARISING OUT OF SLP (CIVIL) NO. 3324 OF 2015)

YERIKALA SUNKALAMMA & ANR. …APPELLANT(S)

VERSUS

STATE OF ANDHRA PRADESH,
DEPARTMENT OF REVENUE & ORS. …RESPONDENT(S)

J U D G M E N T

Signature Not Verified
Digitally signed by
CHANDRESH
Date: 2025.03.25
16:30:28 IST
Reason:

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts: -

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1. Leave granted

2. This appeal arises from the judgment and order passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh dated 10.07.2014 in AS No. 1931 0f 2002 by which the High Court allowed the first appeal filed by the Respondents (original defendants) and thereby set aside the judgment and decree dated 05.08.1999 passed by the Principal Senior Civil Judge, Kurnool in Original Suit No. 115 of 1996 instituted by the appellants herein (original plaintiffs).

A. FACTUAL AVERMENTS

3. The subject matter of the present litigation is a parcel of land, admeasuring approximately 3.34 acres, bearing Survey No. 451/1 situated in Dinnedevarapadu Mandal, Kurnool District, Andhra Pradesh (hereinafter, the **"Subject Land"**). It is the case of the appellants that in 1995, the Respondents, without any intimation or prior notice, unlawfully dispossessed the appellants from the Subject Land - a purported act that compelled them to institute O.S. No. 115 of 1996 in the Court of the Principal Senior Civil Judge, Kurnool, wherein the appellants sought a declaration of their title to the Subject Land.

4. According to the appellants, the ownership of the land can be traced back to 1943. The subject land was then originally owned by one Harijana Govindu. It is the case of the appellants that the subject land was not a government assigned land but rather a private property over which the respondents had no right, title or interest at any point of time.

5. The Subject Land was mortgaged by Harijana Govindu with Perugu Swamy Reddy by virtue of a mortgage deed dated 06.06.1943 as security for a sum of Rs. 100/-. The said mortgage deed was not redeemed during the lifetime of Harijana Govindu and Perugu Swamy Reddy As Harijana Govindu defaulted on the payment of the loan, the Legal Representatives of Perugu Swamy Reddy instituted a suit for the recovery of the said sum, bearing suit number O.S. No. 178 of 1967, before the Court of the Principal District Munsif, Kurnool. The Trial Court decreed the suit in favour of the legal representatives for sale of the mortgaged property.

6. In furtherance of the aforesaid decree, execution proceedings were instituted by the legal representatives of Perugu Swamy Reddy in E.P. No. 69 of 1961 before the Court of the Principal District Munsif, Kurnool. In the said proceedings, the Subject Land was duly auctioned in a Court Auction dated 22.04.1970, whereupon one Kuruva Ramanna purchased it for Rs. 600/- and took possession of the land by way of a process issued by the Court on 09.10.1970. The delivery of possession of the subject land was recorded by the District Munsif Court, Kurnool on 06.11.1970. Later on, 10.12.1970, a sale certificate was issued by the Trial Court under Order 21 Rule 94 of the Code of Civil Procedure, 1908 (for short, the "**CPC**"). The relevant portion of the Certificate issued under Order 21 Rule 94 of C.P.C is reproduced herein below:

> *"In the execution of the above decree on 22.4.1970 auction was conducted in respect of the Schedule immovable property belonging to the respondents, knocked down in favour of the Auction Purchaser P. Ramannna for Rs. 600/ only and the said sale was confirmed. on 1.7.1970 certificate is issued accordingly."*

7. The auction purchaser *viz.* Kuruva Ramanna further transferred the property to one Yerikala Rosanna, the deceased father of the appellant no. 1 by virtue

of a registered sale deed dated 10.12.1970 bearing Document No. 3154 of 1970, for a total sale consideration of Rs. 600/-. Accordingly, the father of the appellant no.1 was in possession and enjoyment of the Subject Land till his death in 1986. The Ryotwari patta was also issued in favor of the father of appellant no. 1 in respect of the subject land and other survey numbers, considering his uninterrupted possession and enjoyment thereof. The relevant portion of the sale deed is reproduced herein below:

> *"Document No. 3154 of 1970*
> *Sale Deed for Rs. 600/-, dated 10.12.1970 1970 December 10 equivalent Shalivahana Shaka 192 Margasira 19 Kuruva P. Ramanna, S/o Kuruva P. Ramanna, Agriculturist, R/o Dinnadevarapadu Village, Deinnedevarapadu P.O. Kurnool Taluq, Kurnool District, executed the sale deed in favour of Yerukala Roshanna, S/o Yerukala N aganna, agriculturist, R/o Dinnadevarapadu Village, Dinnadevarapadu Post, Kunool Taluq, Kurnool District, which recites that and my personal and family agricultural expenses today received a sum of Rs. 600/-only in consideration of whereof I sold the schedule property in your favour and delivered the possession of it to you today itself. From today onwards you, your legal heirs are entitled to enjoy with absolute and Saleable rights over the schedule land and that from today neither myself nor my legal heirs have any right or title over the schedule land. I have executed the sale deed with my free will and consent."*

8. On the death of his father, the appellant no. 1 is said to have been in possession and enjoyment of the Subject Land. According to the appellants, the principal cause of action to institute the suit first arose in the year 1995, as they came to be 'illegally' dispossessed from the Subject Land without any intimation or prior notice by the respondents. It is the case of the appellants that as the respondents wanted to construct a District Institute of Education and Training Centre (DIET) building on the aforesaid land, they were forcibly dispossessed without payment of any compensation of any description.

9. According to the appellants, upon seeking explanation from the respondents as regards their subject land, they were informed that the subject land was an assigned government land, endowed with non-alienable rights to it and that the Government retained the rights to resume the assigned land at any time for a 'public purpose'.

10. The appellants refuted the claim of the respondents before the Trial Court, contending that the Subject Land was a 'Patta Land' and, by its very nature, it could not have been assigned to anybody. In support of this position, it was averred that a Pattadar Passbook was issued to the appellants under the Andhra Pradesh (Record of Rights in Land and Pattadar Pass Books) Act, 1971 (for short, the "**Act of 1971**").

11. Aggrieved by the foregoing, the appellants submitted a representation dated 23.01.1996 addressed to the District Collector, Kurnool, stating that the subject land was purchased from one Kuruva Ramanna under a registered sale deed in the year 1970 for a valid consideration and they had been in exclusive possession of the same. The appellants requested the District Collector to cancel the aforementioned resumption. As the District Collector failed to respond to the said representation, the plaintiffs issued a notice dated 04.01.1996 under Section 80 CPC to the District Collector, intimating that a suit would be instituted against the State if the Subject Land was not reconveyed back to the appellants.

12. The appellants ultimately instituted an original Suit being O.S. No. 115 of 1996 before the Trial Court, praying for a declaration of their title to the Subject Land and for an order directing the respondents to deliver the possession to them.

13. The respondents in their written statement took the stance that the Subject Land was an arable waste land owned by the Government. The respondents had no knowledge of the events occurring from the time when Harijana

Govindu mortgaged the land till when the land was conveyed by Kuruva Ramanna to the deceased father of the appellant no.1 and the respondents denied that the appellants were in possession of the subject land after the death of father of appellant no.1.

14. According to the respondents, the subject land by virtue of being an assigned government land was subject to certain conditions; one of those being that the Government at any time may resume the land wholly or in part, if it was of the opinion that the land is required for any public purpose. In light of the same, it was contended that Harijana Govindu did not possess any alienable rights at any point in time and therefore, could not have further alienated the Subject Land.

15. According to the respondents, the Subject Land was resumed by the Mandal Revenue, Kurnool in the resumption proceedings No. R.C.C 184/89 dated 03.02.1989 and in addition to the same, the Mandal Officer also resumed various other parcels of land, as the said lands were situated at a hill slope with red gravel. Thus, they were unfit for any sort of cultivation.

16. According to the respondents upon requisition from the District Educational Officer, Kurnool for the construction of a DIET Building, the Mandal Revenue Officer, together with the Mandal Surveyor and Revenue Inspector, inspected the lands and found them suitable for such construction. Thereafter, the Sub-Divisional Records were prepared and scrutinized by the Deputy Inspector of Survey, Kurnool whereby the said lands were classified as arable waste lands.

17. Pursuant to the resumption proceedings, a notice was published in the village as part of the procedure to invite objections, if any, against the transfer of the subject land in favor of the Education Department. As no objections were received within the time period stipulated, the Gramapanchayat of Dinnedevarapadu gave its consent for transfer of the said lands in favour of the Education Department. Thereafter, on 01.05.1989, the possession of the

land was handed over to the District Educational Officer, Kurnool for the purpose of constructing the DIET Building.

18. According to the respondents, in the year 1995, the Education Department commenced the construction of the DIET Buildings on a portion of the resumed land. According to the respondents, the resumption of the land was effected *bona fide* for a public purpose and in strict compliance with the Rules framed under the Board Standing Order No. 15 of the Andhra Pradesh Board of Revenue Standing Orders and other provisions. The action of the government in resuming the lands cannot be termed as a high-handed action and the appellants have no right, title, or interest in the land.

19. According to the respondents, the suit was otherwise also barred by limitation. The possession of the Subject Land was transferred to the District Collector in 1989, whereas the suit came to be instituted in 1996, i.e., beyond the prescribed period of limitation as per the Limitation Act, 1963.

20. We must try to understand the exact case of the appellants as pleaded in the plaint. The relevant pleadings in the plaint read thus:

> *"3. The plaintiffs are the owners of plaint schedule land. Then plaint schedule land originally belonged to one Harijana Govindu, resident of Dinne Devarapadu. The said Govindu mortgaged the plaint schedule land for Rs. 100 in favour of one Perugu Swamy Reddy of Dinne Devarapadu under a mortgage deed dated 6.6.1943 the mortgage was not redeemed during the life time of Govindu and Perugu Swamy Reddy. Therefore Perugu Swamy Reddy's sons filed a suit O.S. 178/67 in District Munsif's court, Kurnool. For recovery of mortgage money against the sons of Govindu and accordingly a decree was passed for sale of the mortgaged property i.e. the plaint schedule land. In pursuance of the said decree E.P. was filed for sale of the plaintiff schedule land and recover the decretal amount. In the court auction held on 22.4.70, one Kuruva Ramanna of Dinne Devarapadu purchased the plaint schedule land for Rs. 600 and took delivery of the land through process of court on 9.10.70 and the delivery was recorded by court on 6.11.70.*

4. The court auction purchaser, Kuruva Ramanna, in turn sold the plaint; schedule land for Rs. 600 to 1st plaintiffs father, Yerikala Rosanna, under a registered sale deed dated 10.12.70. The 1st plaintiffs father was in possession and enjoyment of plaint schedule land till his death in the year 1986. A ryotwari patta pass book was issued to 1st plaintiffs father for the plaint schedule land and others S. nos. in his possession and enjoyment. On the death of his father, the 1st plaintiff is in possession and enjoyment of plaint schedule land without obstruction from any quarter.

5. The defendant has no manner of right, title or possession to the plaint schedule land. From the beginning the plaint schedule land is in the hands of private individuals and at no time it was in possession of Government. Last year the defendant took possession of a portion plaint schedule land for the purpose of constructing a building for District Institute of Educational Training Centre (DIET) without issuing any notice to the plaintiff and without paying any compensation to the plaintiff. The area so occupied by Government will be about 34 cents and the plaintiff is cultivating the balance extent in the plaint schedule land.

6. The Government has taken possession of plaint schedule land from the plaintiffs on the false and mischievous plea that the plaint schedule land is an assigned land and that the Government is at liberty to resume their assigned land at any time for public purpose. This stand of Government is utterly false. The plaint schedule land is a patta land from the days of yore and it is not an assigned land to anybody. The 1st plaintiff gave a representation to the Dist. Collector, Kunrool on 23.1.96 stating all the true facts about plaint schedule land and requested the District Collector, Kurnool, to reconvey the plaint schedule land to the petitioner. But the District Collector Kurnool did not redress the grievance of plaintiff. Therefore the 1st plaintiff ultimately gave a notice to the Dist. Collector, Kurnool, under Section 80 C.P.C. on 4.1.96 informing the District Collector that a suit will be filed against the State for its high handed action if the District Collector does not cancel the so called resumption of plaint schedule land or pay the compensation to the plaintiff at the rate of one lakh rupees per acre. The District Collector, Kurnool received the said notice on 8.1. 96 but did not comply with the demand of the plaintiff. Hence the plaintiff files this suit for declaration of plaintiff's title to the plaint schedule and for recovery of possession of plaint schedule land from the defendant.

7. The cause of action arose in September, 95 when the defendant took over the plaint schedule land high handed by for construction of District Institute of Educational Training Centre. (DIET) and subsequent dates when the plaintiff demanded reconveyance of plaint schedule land to the plaintiff and the defendant refused to comply with the demand of plaintiff."

(Emphasis supplied)

21. In para 11, the appellants prayed as under:

"11. The plaintiffs therefore pray that the Hon'ble Court may be pleased to declare plaintiffs title to the plaint schedule land, direct the defendants to deliver back the possession of the plaint schedule land to the plaintiff, award costs and grant any other relief which the Hon'ble Court deems fit and proper under the circumstance of the case."

22. To the aforesaid, the respondents herein filed their written statement stating as under:

"3. The allegations in para 3 of the plaint that the plaintiffs are the owner of the suit schedule land, and it originally belonged to Harijana Govindu, and the said Govindu mortgage and land to Perugu Swamy Reddy of Dinnedevarapadu Village, under a mortgage deed dated 6.6.1943, and that Perugu Swamy Reddy filed O.S. No. 178/67 in D.M.C. Kurnool for recovery of the mortgage debt and that one Kuruva Ramana purchased the. said land in Court Auction for realization of the decree in O.S. No. 178/1967 on 22.4.1970 and delivery was effected in favour of Kuruva Ramana on 6.11.1970 are all not known to this defendant and the plaintiff is put to strict proof of all the said allegations. Likewise the further allegations that Kuruva Ramana sold the plaint schedule land to Yerikala Rosanna under a registered sale deed dtd. 10.12.1970 and that plaintiffs father was in possession and enjoyment of the said land till his death in the year 1986 are also not within the knowledge of this defendant. The further allegations that on the death of his father, the plaintiff is in possession and enjoyment of the suit land without obstructions from any quarter are all false and incorrect statements made for the purpose of the suit.

4. The contention of the plaintiff in para 5 of the plaint that the defendant has no manner of right title or possession to the plaint

schedule land and that from the beginning the suit land is in the hands of private persons and at no time it was in possession of Government are all not true and correct. The further allegations that the suit schedule land is a patta land and it is not an assigned land to anybody is also an utterly false statement created for the purpose of the suit.

5. This defendant humbly submits that the land in S.No. 451/1 extent Ac. 3.34 cents situated in Dinnedevarapadu Village was originally arable waste land belonging to the Government. The said land was assigned to Harijana Govindanna subject to certain conditions and one among them is that the Government may resume the land wholly or in part if in the opinion of the Government the land is required for any public purpose. The said Govindanna has no alienable rights in the land assigned to him. The suit schedule land was resumed to Government by the Mandal Revenue Officer, Kurnool in his proceedings No. R.C.B. 184/89 dated 3.2.1989.

6. The following lands are situated within the Dinnedevarapadu village limits near B. Tandrapadu village and are classified as Arable Waste lands.

S. No. 449/1	*Extent Ac. 1.48*
449/2	*0.95*
449/3	*3.03*
449/4	*3.00*
451/ 1	*3.34*
451/3	*1.41*
451/4	*0.70*
Total	*13.91 cents*

The entire lands were on hill slope with red gravel. These lands are unfit for cultivation.

7. It is further submitted that on the requisition of District Educational Officer, Kurnool for transfer of the above lands including the plaint schedule land for the purpose of construction of District Institution of Education and Training Centre Buildings, the Mandal Revenue Officer, Kurnool along with Mandal Surveyor and Revenue Inspector, inspected the above lands and found that the said lands are suitable for the construction of DIET Centre. Thereupon the Sub-Divisional Records for the above lands have been got prepared and it has been got scrutinized by the Deputy

Inspector of Survey, Kurnool. According to the Village accounts the said lands are classified as Arable Waste lands. A notice has been got published in the village inviting objections if any against the transfer of the land in favour of Education Department. The time allowed for objections was expired by 31.10.1990, and no objections have been received from the public. The said lands are in Dinnedevarapadu Gran1a Panchayat limits. The Grama Panchayat also has given its consent for transfer of the above land in favour of the Education Department. It is further submitted that these lands are vacant lands and are free from any encroachments, and the said land is quiet suitable for construction of DIET buildings. Thereupon the land was given possession to the District Educational Officer, Kurnool on 1.5.1989 by the Mandal Revenue Officer, Kurnool in strict conformity with the rules and regulations prescribed under Law. Subsequently the said land was transferred in favour of District Educational Officer, Kurnool for construction of DIET buildings. During the year 1995 the Education Department started construction of DIET Centre buildings in a portion of the plaint schedule land. The action of the Government in resuming the assigned and required bona fide for a public purpose cannot be termed as a high handed action. The entire process was made in accordance with the Rules framed under the Board standing orders and other relevant provisions of law. The allegations contra are denied as false.

8. This defendant submits that the plaintiff has no right, title, interest and possession of the plaint schedule land. Therefore the question of declaration of his title or delivery of possession to the plaintiff does not arise. The plaintiff has misconceived his remedy if any.

9. In any event the suit is barred by limitation. Issue of notice will not save limitation. The land was required to the Government in the year 1989. Therefore, the suit filed in the year 1996 is clearly barred by time."

(Emphasis supplied)

i. <u>Trial Court's Judgment</u>

23. The Trial Court framed the following issues for its consideration:

"1. Whether the plaintiff is in possession and enjoyment of the suit land without obstruction from any quarter from the date of his father?

2. Whether the defendants have no manner of right or title for the possession of the plaint schedule property?

3. Whether the suit land is assigned land and Govindanna has no alienable rights for said assigned lands?

4. Whether the suit was resumed to Govt. by M.R.O., Kurnool with the proceedings No. R.C.B. 184/89, dt. 3-2-1989?

5. Whether the suit land was given in possession of District Educational Officer on 1-5-89 by M.R.O., Kurnool?

6. Whether the plaintiff has no right or interest or possession of the plaint schedule right?

7. Whether this court has no jurisdiction to entertain the suit?

8. Whether the suit is bad for non-joinder of necessary parties?

9. To what relief?

10. The issues 1, 2, 3 and 6 are recasted as follows: "Whether the plaintiffs are the owners of suit schedule property and if so, 'they are entitled for declaration and recovery of possession as prayed for in respect of the suit schedule property"?

24. The findings recorded by the Trial Court in its Judgment and Decree dated 05.08.1999 can be understood in two parts: -

a. **First,** the Trial Court held that the resumption proceedings conducted by the Mandal Officer was tainted with serious procedural irregularities. The respondents had failed to adduce any credible evidence to establish that the Mandal Revenue Officer had conducted any enquiry before resuming the Subject Land & handing it over to the District Educational Officer, Kurnool. It was held that mere bald assertions in the oral evidence of DW1, Mandal Revenue Officer, would not be sufficient to establish that the resumption of the Subject Land was in accordance with law. Moreover, when the appellants challenged the resumption proceedings, the authorities had failed to

produce any relevant records to establish that they had followed proper procedure for the purpose of resumption of the land. Therefore, the Trial Court had drawn an adverse inference against the evidence of the DW1, Mandal Revenue Officer.

b. **Secondly**, the issuance of the pattadar passbook duly signed by the then Tahsildar in favour of the appellants combined with the land revenue receipts was held to serve as clear indicators of the actual possession and enjoyment of the Subject Land by the appellants. Furthermore, the Trial Court observed that the oral testimony of PW1 was duly corroborated by documentary evidence. This was considered to have sufficiently established the appellants' title and possession to the Subject Land, thereby entitling them to recover possession of the same.

25. The Trial Court accordingly decreed the suit in favour of the appellants declaring them to be the lawful owners of the subject land and directed the respondents to deliver the possession of the subject land back to the appellants and observed as under:

> *"21. As seen from ex. All proceedings from District Revenue Officer, Kurnool dt. 31-5-1996 indicating that the first plaintiff issued Ex.A8 Section 80 C.P.C. notice dt. 4-1-1996 and the District Revenue officer requested the Mandal Revenue Officer to send resumption records without any delay. Further as seen Ex.A12 dt. 6-5-1996 proceedings from District Revenue Officer, Kurnool indicating that D.R.O. Kurnool address Ex. A12 to M.R.O., Kurnool to send resumption records pertaining to the suit schedule property. As regard Ex. A7, Ex.A8 and Exs.A10 to A12 indicates that the first plaintiff sent petitions to the higher revenue authorities and also issued notices to them to enquire into the matter. Absolutely, there is no material on record that what action was taken by the District Revenue Authorities on the petitions and notices issued by the first plaintiff. Even today, this Court did not see the light of the day with regard to the alleged resumption proceedings of suit schedule property in R.C.B. 184/89 dt. 28-2-1989. Absolutely, there is no*

evidence when Mandal Revenue Officer conducted enquiry and resumed the suit land and handed over possession of suit land to District Educational officer, Kurnool. The mere statement of DW1, Mandal Revenue Officer is not sufficient to prove that he has followed proper procedure and resumed the suit land. When the plaintiffs challenging the resumption proceedings itself as no enquiry was conducted and no notice was served on them, it is for the Government to produce such resumption proceedings in R.C.B. 184/89, dt. 3-2-89 to prove that they have followed proper procedure in resumption of the suit land. Having regard to the facts and circumstances of the case, absolutely there is no material before this court to know whether the Mandal Revenue Officer adopted proper procedure or conducted any enquiry at the time of resumption of suit land. The evidence of DW1 is not sufficient to establish that the resumption of suit land is legal and proper without produce any relevant records. Nothing prevented the revenue authorities to produce the resumption proceedings of the suit land before this court. Therefore, inference can be drawn that the Mandal Revenue Officer, Kurnool has not adopted procedure in resumption of suit land. In the absence of resumption proceedings of the suit land, the court cannot accept the evidence of DW1 Mandal Revenue Officer, Kurnool with regard to resuming of the suit land. Therefore, I have no hesitation to come to conclusion that Mandal Revenue Officer, Kurnool has not adopted proper procedure while resuming the suit land and possession given to Education Officer cannot be said legal.

22. The learned Asst. Government Pleader pointed that the Mandal Revenue Officer resumed the suit schedule land for public purpose as the suit land is an assigned land. It is true that there are some conditions in D. Form patta that the Government may take the assigned lands if it is required for the public purpose. But, in this case, the facts are different. The plaintiffs belong to Yerikala Community (Schedule Tribe). It is also the case of plaintiff that except the suit land, they have no other land of their own. They purchased the suit schedule land under a registered sale deed in the year 1970 DW1 admitted in his cross-examination that they have issued Ex.A3 patta pass book in respect of suit schedule land and also Ex.A4 to Ex.A6 land revenue receipts for having paid the land revenue by the plaintiffs to the suit schedule property. If really, the plaintiffs family is not in possession and enjoyment of the suit land, there is no need to issue Ex.A3 patta pass book to the plaintiffs and also receive land revenue from the plaintiffs. Learned Asst. Govt. pleader argued that buildings were raised in the suit property. Even

structures raised in the suit property, it has no significance to the circumstances of present case.

23. DW1 Mandal Revenue officer on one hand he admits having issued Ex.A3 patta pass book and Ex.A4 to A6 land revenue receipts and on the other hand, denies the plaintiff peaceful possession in respect of the suit schedule property. It is not the case of defendant that they have not issued Ex.A3 to A6 patta pass book and land revenue receipts. Having regard to the facts and circumstances of the case there is no proof when Government resuming the suit land and is handed over possession to Educational Officer, Kurnool. Therefore I have to answer issues 4 and 5 against defendant and in favour of plaintiffs.
Further, there is no material on record to show that the Mandal Revenue officer has adopted proper procedure while resuming the suit land. Therefore, the resumption of suit land can be said as improper and illegal.

24. RECASTED ISSUE FRAMED ON 30-7-1999:

On this issue, the burden lies on the plaintiffs to prove that they are the owners of suit schedule property and they are entitled for declaration and also relief of recovery of possession.

25. Coming to the evidence of Second Plaintiff as PW1 that the suit schedule land originally belongs to one Madiga Govindu of her village. The said Govindu mortgaged the suit schedule land to Perugu Swamy Reddy. As the Govindu did not pay the mortgage amount, the Swamy Reddy filed a suit against the Govindu, the said suit was decreed. One Kuruva Ramanna purchased the suit schedule property in court auction and took possession of the same through court. Ex.A1 is registration extract of sale certificate in E.P. 51/59 in O.S. 178/67 for having purchased the suit schedule property by Kuruva Ramanna in court auction.

26. Further, according to PW1, Rosanna the father of first plaintiff purchased the suit schedule property under the original of Ex.A2 dt. 10-12-1970. Considering the possession and enjoyment, the Government also issued patta pass book in favour of her father-in-law. Ex. A3 is such pass book. They have been paying the land revenue to the suit schedule land. Ex.A4 to Ex.A6 are such receipts. Further, according to PW1, the suit schedule property is an agricultural land and they are raising crops in the suit schedule property. The Government took the possession of suit schedule

property for constructing the school without their consent. First plaintiff her husband also sent Ex.A7 petition to District Collector, Kurnool. The District Collector, Kurnool did not act on Ex.A7. Thereafter notice under Section 80 C.P.C. issued. Ex.A8 is such notice at 4-1-1996. Ex.A9 is served acknowledgments relating to Ex.A8 Sec. 80 C.P.C. notice. The District Collector, Kurnool issued reply notices which are Ex.A10 to Ex.A12.

27. Further, according to plaintiffs that they belong to Yerikala community which is a schedule tribe caste. The Mandal Revenue Officer has issued Ex.A13 caste certificate to that effect. They were in possession and enjoyment of the suit schedule property. The suit land is not assigned land. Hence, to declare their rights in respect of the suit schedule land and also deliver the same.

28. In the cross-examination, PW1 denied the suggestion that they have no way connected or related to the suit schedule property. PW1 further denied the suggestion that they never raised any crop in the suit schedule property. PW1 further denied the suggestion that they are neither the owners nor possessors of the suit schedule property. As seen from Ex.A1 registration extract of sale certificate would go to show that the legal representatives of Perugu Swamy Reddy filed suit in O.S. 178/67 against the legal representatives of Govindu and others to pass a preliminary decree, in respect of suit schedule property. In the auction, one Kuruva Ramanna purchased the schedule property for Rs. 600/- being the highest auction purchaser. So, as seen from Ex.A1, sale certificate issued by the competent Civil Court, that Kuruva Ramanna purchased the suit schedule property in court auction being the highest bidder.

29. Further as seen Ex.A2 registration extract sale deed dt. 10-12-1970, it discloses that Rosanna, the father of first plaintiff purchased the suit schedule property for Rs. 600/- from Ramanna. It is also evident that considering the possession and enjoyment of Yerikala Rosanna, the father of first plaintiff, the Government issued Ex.A3 patta pass book in respect of the suit schedule property. As seen from Ex. A4 to Ex.A6, the plaintiffs family have paid necessary land revenue to the suit schedule property. It is also evident that the first plaintiff sent petitions to the District Revenue authorities for taking possession of his property by Mandal Revenue officer, Kurnool which is evident under Ex.A7, Ex.A8, Ex.A10 to Ex.A12. It is clear that the District Revenue authorities did not act on the notices given by the plaintiff to enquire the dispute with regard to suit schedule property. The District Revenue authorities did not take any action,

there after the first plaintiff has issued Ex.A8 Section 80 C.P.C. statutory notice and filed present suit for the reliefs as stated above.

30. It is the case of plaintiffs that they belong to Yerikala community (schedule tribe) they do not possess any other land except the suit schedule property. The Mandal Revenue Officer, Kurnool did not issue any notices nor enquired at the time of resumption of land.

31. It is the case of defendant that the plaintiffs are strangers to the suit schedule property. The Govindu original assignee has no right to alienate the suit schedule property to anybody. The plaintiffs were never in possession and enjoyment of the suit schedule property. If really, the plaintiffs are not in possession and enjoyment of the suit schedule property, the question of issuing Ex.A3 patta pass book duly signed by then Tahsildar and village Karnam to Rosanna, the father of first plaintiff does not arise. If the plaintiffs family were not in possession of the suit property, the question of taking any land revenue with them under Ex.A4 to Ex.A6 does not arise. If we correlate, the evidence of PW1, coupled with Ex.A1 to Ex.A6, it would clinchingly and conclusively establish that the plaintiffs are the owners and possessors of the suit schedule property.

32. Having considered the possession and enjoyment of the suit schedule property of the plaintiffs family, the Government has issued Ex.A3 patta pass book and also received land revenue under Ex.A4 to Ex.A6. One thing is certain that the Mandal Revenue Officer has not adopted proper procedure while resuming the suit schedule land. The Mandal Revenue officer should have allotted some other land to the plaintiffs in view of suit property or to pay some compensation to them for resuming the land as the plaintiffs belong to Yerikala caste which is a schedule tribe community.

33. In the instant case, the plaintiff have not only marked Ex.A1 to Ex. A6, but also examined second plaintiff as PW1 to prove their title and possession in respect of the suit schedule property. Therefore, I have no hesitation to hold that the plaintiffs are the owners of the plaint schedule property, certainly they are entitled for recovery of possession of suit schedule property. The issue is, answered in favour of plaintiffs and against the defendants."

(Emphasis supplied)

B. IMPUGNED JUDGMENT

26. Aggrieved by the judgment & decree passed by the Trial Court, the respondents preferred an Appeal before the High Court of Judicature at Andhra Pradesh being in AS No. 1931 of 2002.

27. Before the High Court, the respondents submitted that the suit land, having been assigned to Harijana Govindanna, by its very nature was a government assigned land, and thereby any attempt to alienate it was consequently invalid. It was argued that due process of law was followed to resume the land. The record clearly indicated that the Mandal Revenue Officer at Kurnool, acting under proceedings No. Rc.B.No.184/89 dated 03.02.1989, resumed possession and subsequently on 01.05.1989, transferred the land to the District Educational Officer in strict compliance with the statutory requirements.

28. It was further submitted that the fact as stated above established that the appellant and their predecessors had no right, title or authority to convey any interest in the Subject Land. While contending so, the respondents placed strong reliance on the following decisions:

(i) ***Dharma Reddy v. Sub-Collector, Bodhan & Ors.*** reported in **(1987) 1 APLJ 171**.

(ii) ***Chittoor District Co-op. Milk Producers Union Ltd., Milk Products Factory v. C. Rajamma.*** reported in **(1996) 2 ALT 526**.

29. The appellants herein, while opposing the appeal, before the High Court placed strong reliance on the decision in ***K.M. Kamallula Basha v. District Collector, Chittoor District, Chittoor*** reported in **(2009) 3 ALD 385**.

30. The High Court framed the following point for its determination:

> *"1. Whether the Plaintiff got no right and title over the property and the Defendant/Appellant got right of resumption of land in claiming as assigned land for the public purpose and if so, the Trial Court's decree and judgment in favour of the Plaintiffs*

impugned in the appeal by the Defendant/Appellant is unsustainable, so also on the ground of maintainability?"

31. The High Court allowed the appeal and thereby set aside the judgment & decree of the Trial Court on the ground that the appellants had failed to establish their title over the Subject Land and further that they had failed to produce any valid documents to counter the respondent's case that the subject land was a government-assigned land.

32. The High Court relying on the decision in ***K.M. Kamallula Basha(supra)*** took the view that if a D-Form patta contains a condition permitting the Government to resume an assigned land for a public purpose, such as the establishment of a milk-processing plant by a cooperative society, such condition remains binding irrespective of the duration of possession by the assignee or those claiming through them. The Court noted that in cases of assigned lands, the proprietary rights remain with the Government, and as such, no assignee can claim a title beyond what is expressly stipulated in the conditions of assignment. It was further observed that an assignee cannot lawfully transfer an assigned land, and consequently, no transferee can claim a better title than the assignee.

33. Accordingly, the High Court held that the assignee, being in permissive possession by virtue of the assignment, and any alienee deriving title from such possession, whether through voluntary or involuntary alienation, cannot obtain a title superior to that which the original assignee and his legal representatives had. Even when the land is alienated through a court auction or by mortgage to a private individual who subsequently resells the property, the title acquired remains limited to the rights originally conferred by the assignment.

34. Few relevant observations made by the High Court in its impugned judgment are reproduced hereinbelow:

> "*25. It is also deposed by D.W. 1 that the said Govindu, original assignee had no right to transfer or alienate to anybody. It was revealed in the cross examination of D.W.1 that according to Board Standing Orders No. 15, pattas were issued with conditions in favour of the assignees. It is deposed that conditions are administrative in nature. In fact, Board Standing Orders got statutory force as a subordinate legislation and when the original assignment by patta issued is subject to conditions and the B.S.O. No. 15 is not in dispute by plaintiffs including from D.W. 1 cross examination in favour of the original assignee, Govindu they have no right to dispute the enforceability of B.S.O. No.15, more particularly, even in the suit.*
>
> *26. It is also brought in the cross examination that it is the Government land and after assigning the Government land, it is being called as patta land of the assignee. He deposed that he does not know whether individual notices were issued to the occupants before resumption and any personal enquiry was conducted. He deposed that no enquiry conducted under Section 3 of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (in brief 'the Act'). In fact, for resumption of land for public purpose, Section 3 of the Act has no direct application, as Section 3 reads, prohibition of any transfer is null and void and unless the transfer is to a landless poor, the land is to be resumed. Here, D.W. l deposed that there is a violation of the assignment conditions brought by D-Form patta by transfer also under Section 3 of the Act. He denied the suggestion that suit land assigned Govindu was on market value and thus the suit land is a patta land of Govindu. It is important to note here that it is a clear admission from the plaintiffs by said suggestion not even inadvertent one being unambiguous to bind the plaintiffs that the suit land is the Government assigned land, assigned to the original person Govindu i.e., assignee. It is for the plaintiffs to establish therefrom that it was assigned for consideration or without right of resumption or Govindu got any absolute rights, which they did not prove. He also denied the suggestion that they did not follow the correct procedure and manipulated the records and occupying the land from the possession of the plaintiffs. From the said suggestion also, they are indirectly saying that there is some procedure followed and as such*

it is for the plaintiffs to show how the procedure followed is not correct. There is no worth evidence in this regard, more particularly, from the evidence of P.W. 1/2nd plaintiff who is the only witness examined on behalf of the plaintiffs. In the reexamination, even D.W.1 deposed that other assignees never raised any objection for resumption of the lands to construct the buildings of the Education Department. He did not disclose that fact, but for asked in the cross examination including the names of the other assignees. It is also crystal clear that suit land is part of the Government assigned land by D-Form patta in favour of the Harijana Govindu, way back in 1943, with right of resumption by the Government at any time and the assignee is like a licencee and not absolute owner and thus any length of possession does not confer any right, much less to set up any adverse possession.

27. From this background, coming to the legal position, in K.M. Kamallula Basha (supra) it was held that, under Section 3, there is a prohibition for transfer of the assigned land that was assigned prior to 1954, would not operate for assignments made two decades earlier thereto and the purchaser of assigned land acquires ownership rights by prescription, if he enjoys possession of said land for 30 years. For the said conclusion in the writ petition referred but for relied upon Mandal Revenue Officer report suggesting for no objection certificate for registration in favour of the transferee of the assigned land that was since objected by the District Collector impugned in the writ petition in the Sub-Registrar insisted for no objection of the Government land for transfer from the Government. This decision no way dealt with the earlier precedents on the scope of the law including the provisions of the A. P. Assigned Lands (Prohibition of Transfers) Act, 1977.

28. The Full Bench Judgment of this Court in Dharma Reddy (supra), held that the A.P. Assigned Lands (Prohibition of Transfers) Act (9 of 1977), Section 3(1) is retrospective in nature, which applies even to transfer of assigned land taking place prior to the Act came into force for resumption of the land to the original assignee by disbursing the transfer alienee unless the alienee is a landless poor. Therefore, the expression in K.M. Kamalluia Basha (supra) that runs contrary to the Full Bench expression in Dharma Reddy (supra), cannot be outweighed. Apart from it, in the Full Bench expression it was observed that while answering a reference upholding the Division Bench expression of Dharma Reddy (supra) of retrospective operation by over ruling of earlier Division Bench expression of (1979) 1 ALT 79 of only prospective in operation

while answering the said reference also by referring to the Apex Court's expression in Manchegowda v. State of Karnataka, under the Karnataka S.C. & S.T. Prohibition of transfer of certain lands Act 2 of 1979, the provisions of which are identical to the Act 7 of 1977 are similar analogy to rely on the probabilities that where the transferee acquires only a defeasible title liable to be defeated in accordance with law, avoidance of such defeasible title which still remains to be defeated in accordance with law at the date of commencement of the Act and recovery of possession of such granted land on the basis of provisions contained in Sections 4 and 5 of the Act cannot be said to be constitutionally invalid and such a provision cannot be termed as unconscionable, unjust and arbitrary. It was also observed that an assignee or transferee shall not get any indefeasible title over the assigned Land for prohibiting the resumption.

29. In Chittoor District Co-op. Milk Producers Union Ltd., (supra) also it was held that in the D-Form patta when there was condition No.17 for resumption of assigned land by the Government for public purpose without compensation where it is for establishing milk processing plan by a society, the same is permissible and assignee shall not have any right to property more than what is stipulated in the assignment conditions and that too in the case of assignment land the proprietary land remains with the Government and thereby Government can resume the land for public purpose at any time irrespective of duration of possession of land by assignee or those who inherited from the assignee or claiming through it was so held by setting aside the Single Judges order reported in Smt. C. Rajamma vs The District Collector, wherein the Division Bench observed at paras 8 and 9 to the conclusion that it is the well settled law that when on the one side there is 'public interest' and on the other side interest of an individual, the Court will protect the 'public interest and not the interest of an individual'. Resumption of land, we have already noticed, is intended for a public purpose and thus the public interest is in favour of resumption of land. No assignee can get a right to transfer and in that no transferee can get a right. The document of assignment has incorporated a condition and that condition always remained alive irrespective of the duration of possession of land by the assignee or those who inherited from the assignee. The principle of derivative title is not at all attracted in the case of an assignment because the proprietary right remains with the person who assigns and does not vest in the assignee.

30. Having regard to the above, the assignee is for all purposes in permissive possession by virtue of the assignment, so also any alienee from the assignee, either from voluntary alienation or involuntary alienation, for its makes no difference and thereby this assigned land prohibited from alienation, alienated through court - auction pursuant to the alienation by mortgage to a private individual and who in turn brought the property to sale, the auction purchaser can get no better title than what the original assignee and his legal representatives got, so also the in turn alienee from the auction purchaser as well as the in turn alienee legal representatives or those claiming through. ***As such, the Plaintiffs cannot claim any right or title over the property and they cannot even set up adverse possession against the Government from any length of possession even more than 30 years and they have no iota of right to oppose the resumption much less to seek for restoration of the land by the Government to them and the land having been taken possession and constructed buildings thereby the trial court went wrong.*** *Accordingly, the Point No.1 is answered."*

(Emphasis supplied)

C. SUBMISSIONS ON BEHALF OF THE APPELLANTS

35. We heard Mr. Raavi Yogesh Venkata, the learned counsel appearing for the appellants (original plaintiffs). Mr. Venkata urged that over and above the oral submissions made by him, the written submissions filed on behalf of the appellants may also be taken into consideration. The written submissions read thus:

"1. Petitioner has already filed its written synopsis of submission on 26.12.2021 along with a compilation of relevant statutes and judgments. This Special Leave Petition was heard and reserved on 21.01.2025. In compliance of the order dated 21.01.2025, these written submissions are being filed in addition to the written synopsis of submission already filed.

2. In these submissions Reference to the judgments and statutes is from the 'Compilation for Final Hearing on behalf of Petitioners' already filed on behalf of Petitioners.

3. ***PETITIONER'S CASE:*** *Petitioner is the Plaintiff in the subject suit from which the instant SLP arises. The suit was filed for*

declaration and recovery of possession of subject land. In the suit, the Petitioner traced back their title to 1943, when the land was owned by one Mr. Govindu. Title pleaded and proved by the Petitioner is as follows:

a) Mr. Govindu had mortgaged the subject property (in 1943)

b) After failure to pay the mortgage money, the subject property was foreclosed and sold in a Court auction after default (in July 1970)

c) Petitioner's predecessor purchased the subject property from the Court auction purchaser vide a registered sale deed (in December 1970)

d) Thereafter, the Petitioner's family had been in continuous enjoyment and possession of the subject property.

*e) Petitioner's predecessor was also issued a pattadar passbook under the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (**"ROR Act"**) and paid land revenue on the subject land.*

4. In 1995 for the first time, State (Respondent No.1) illegally disposed the Petitioner, after which after following due process under Section 80 of CPC, the subject suit was filed for Declaration of title and recovery of possession.

*5. **RESPONDENT'S CASE:** It was Respondent's case that the subject land is a government land assigned to Mr. Govindu. Respondent claimed that the assignment was made subject to the condition of non-alienation and the government can also resume the land. It was claimed that the subject land was resumed after following due process. Respondent did not file any documents in the Trial. As such no documents, whatsoever, were marked on behalf of the Respondent.*

*6. **THE JUDGMENTS:** The Trial Court decreed the suit in Petitioner's favour. The same was erroneously reversed by the Hon'ble High Court in a first appeal vide the Impugned Judgment.*

7. The following are Petitioner's submissions:

I. RESPONDENT'S DEFENCE BASED ON THE PLEA OF ASSIGNMENT IS MISCONCEIVED AND LEGALLY ERRONEOUS.

8. Firstly, except for a bald plea, Respondent had not filed a single document to demonstrate that the subject land was an assigned land.

9. Even if the Respondent's stand on assignment is considered on demurrer, it is settled position of law in the State of Andhra Pradesh

that the non-alienation clause was only introduced vide G.O.Ms. No. 1142 in 1954 and the assignments made prior thereto were freely alienable.

10. In the State of Andhra Pradesh, there are 3 distinct periods on the issue of assignments and non-alienation.

***PRIOR TO 1954**: There was no condition of non-alienation.*

***FROM 1954-177**: Executive instructions in G.O.Ms. No. 1142 governed the assignments, which introduced the condition of non-alienation.*

***POST 1977**: The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (**"Assignment Act")** was enacted. Section 2(1) of the Act defines "assigned lands" and "assigned" as lands assigned to the "subject to the condition of non alienation".*

11. State authorities routinely try to illegally interfere in land ownerships of private parties, with long standing titles and possession – as in the present case – contending that the subject land was assigned.

12. In a catena of judgments, the Hon'ble High Court dealt with this issue categorially holding that the State cannot interfere in assignments made prior to 1954.

• KM Kamallula Basha v. District Collector reported in 2009 SCCOnline AP 88.

• G Satyanarana v. The Government of Andhra Pradesh reported in 2014 SCCOnline AP 334.

• PV Rajendra Kumar v. Government of Andhra Pradesh reported in 2010 SCCOnline AP 919.

13. It was also held in Satyanarana's case that the burden of proof lies on the State to demonstrate that the assignments contained a condition of non-alienation.

14. The Hon'ble High Court failed to consider the ratio in Kamallula Basha's case on the premise that the Assignments Act was held to be retrospectively applicable by a Full Bench judgment in Dharma Reddy v. Sub Collector reported in 1986 SCC Online AP 141.

15. The Hon'ble High Court failed to appreciate that the ratio on retrospectivity in Dharma Reddy's case is based on the express wording of the Section 3.

16. If Section 3 is read with Section 2(1) of the Act, it is clear that the ratio in Dharma Reddy's case was meant to deal with situations between 1954 and 1977. In fact, if the eventual decision of the Single Judge of Dharma Reddy after reference is observed, this legal aspect becomes very clear.

17. But for this misreading of the Dharma Reddy's case, the Kamallula Basha's case and other judgments governing the filed are squarely applicable to the instant case, thus supporting the Petitioner's case ex facie.

18. For the first time in the Reply to the SLP, the Respondent took a new factual plea that the subject assignment was made in 1955. This is misconceived for the following reasons:

- *Such stand was never taken before the Trial Court or the High Court. Therefore, new factual pleas cannot be introduced in the Supreme Court.*
- *The High Court itself held that the assignment in the present case was "way back in 1943".*
- *The mortgage by the original owner Mr. Govindu was a registered mortgage in the year 1943*
- *The factum of mortgage in the year 1943 was also specifically pleaded in the Petitioner's plaint. In response thereto, in its Written Statement, the Respondent did not take any plea that the assignment was after 1954, much less a specific plea that the assignment was in the year 1955.*

PETITIONER'S TITLE IS LEGALLY SUPPORTED BY SECTION 6 OF THE ROR ACT

20. It has been the petitioner's plea that the subject land is a patta land and not an assigned land. The petitioner also filed the pattadar passbook issued under the ROR Act.

21. Section 6 of the ROR Act categorially stipulates that the entries in record of rights maintained under the Act "shall be presumed to be true" until the contrary is proved. The presumption provided under Section 6 is not a factual presumption ('may presume') but a legal presumption ('shall presume') to be read with Section 4 of the Evidence Act, 1872.

22. Respondent had not filed a single document to disprove the legal presumption to the reliefs claimed in the suit."

D. SUBMISSION ON BEHALF OF THE RESPONDENTS

36. We heard Ms. Prerna Singh, the learned counsel appearing for the respondents. Her written submissions read thus:

"(i) The land measuring Sy. No. 451/1 measuring Ac 3.34 in Dinnedevarapadu Village (hereinafter referred to as the "Subject Land") was derived from Sy. No. 396 classified as Government Land (dotted land) in the land record/Resettlement Register. The said land was assigned to one Harijan Govindu in NRC 519/1364 dt 12.1.1955 of the Affidavit dt 30.12.2021 filed by the State of Andhra Pradesh). Such an assignment of land is subject to certain conditions, pertinently that such a right is heritable but non-alienable, and the assignee cannot transfer the land.

(ii) On the requisition of the District Educational Officer, Kurnool for transfer of the subject land for the construction of the District Institute of Education & Training (DIET) building. A notice was issued in the village giving due chances for any objections, and the Gram Panchayat, Dinnedevarapadu also gave its consent. The Government took possession of the land vide proceedings No.Rc.C.184/89 of the Mandal Revenue Officer dated 03.02.1989 and the possession was given to the Education Department on 01.05.1989. The DIET building was constructed, and has been functioning since 1995.

(iii) However, after the construction of the building, a Suit being OS No.115/96 was filed before the Ld. Principal Subordinate Judge, Kurnool, wherein the present Petitioner was Plaintiff No.2, praying for declaration of title and recovery of possession of the Subject Land. The Plaintiffs claimed their title to the land based on a sale deed dated 10.12.1970, by way of which the Plaintiffs' predecessor purchased the property from one Kuruva Ramanna, who had bought the subject property in a Court auction vide a Sale Certificate dated 01.07.1970.

The said Court auction allegedly took place since the assignee Harijan Govindu had mortgaged the subject property, and thereafter his LRs had defaulted in the mortgage. Apart from a bare averment that Harijan Govindu mortgaged the subject property vide mortgage deed dated 6.6.1943 (thereby implying that the assignment to

Harijan Govindu was prior to 1943), there was no material produced to show the date of the assignment. No documents whatsoever prior to 1970 were produced establishing the date of assignment in any way.

(iv) Petitioner No.1 was the sole Plaintiff Witness and examined as PW1. She specifically deposed that she was not aware of the assignment of the land to Harijan Govindu and the conditions in the Patta.

(v) The Mandal Revenue Officer (MRO) was examined as DW2 and specifically stated that the land had been assigned to Harijan Govindu subject to the condition of non-alienation.

(vi) By way of the decree dated 05.08.1999, the Ld. Trial Court decreed the Suit in favour of the Plaintiffs. A perusal of the said decree/order reveals that there has been no examination of the title/possession of the Petitioners/Plaintiff. Further, for establishing the Petitioners/Plaintiffs' case that they had been dispossessed illegally, instead of relying on the Plaintiff to establish their case, the Ld. Trial Court placed the burden on the Defendant/Government to refute it (Pg 101-102). The consideration of the Ld. Trial Court nowhere relies on/finds that the assignment to Harijan Govindu was in/before 1943, but only on the sale deed of 1970 (Pg 102-106). The Ld. Trial Court directed recovery of possession to the Plaintiffs/Petitioner.

(vii) Aggrieved by the order of the Ld. Trial Court, the State filed an Appeal being Appeal Suit No.1931 of 2002 before the Hon'ble High Court, in which the impugned order came to be passed, whereby the Hon'ble High Court set aside the order of the Ld. Trial Court. The Hon'ble High Court inter alia observed that the Petitioners/Plaintiffs did not file any document showing the title of Harijan Govindu (Pg11, Pg15). The Hon'ble High Court primarily based the impugned order on the fact that rather than placing the burden on the Plaintiffs to prove their case, the Ld. Trial Court erroneously placed the burden on the Defendant/State and drew an adverse inference (Pg 12-13). The Hon'ble High Court also duly noted that the Petitioners herein accepted that buildings had been constructed and the Government was running an educational institution in the subject land since 1995 (Pg 14). The Hon'ble High Court also noted that no evidence of cultivation was adduced by the Plaintiffs. There is only 1 stray sentence that the assignment was in 1943, but the same is not borne out from any material/evidence on record whatsoever, especially in light of Petitioner No.1's admission that she did not know the conditions of the assignment, and it is not

the basis of the impugned order. The Hon'ble High Court also correctly relied on the Full Bench Judgment of the Hon'ble High Court, whereby the operation of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 were held to be retrospective. Accordingly, the Hon'ble High Court allowed the Appeal.

B. SUBMISSIONS ON BEHALF OF THE RESPONDENT/STATE TO DEMONSTRATE THAT THE JUDGMENT DOES NOT SUFFER FROM ANY INFIRMITY:

(viii) The Petitioners Have Not Proved Title to the Subject Land:

- *The Petitioners claim their title as a subsequent purchaser of the assignee Harijan Govindu. It is admittedly the Petitioners' own case that after 1954, any assignment to landless poor contained the condition of non-alienation (Pg C). However, apart from relying on a bare, unsupported observation of the Hon'ble High Court and a bare statement that Harijan Govindu mortgaged the property in 1943, there is no material adduced to demonstrate that the assignment was before 1954. To the contrary, the land record produced by the Respondent State before this Hon'ble Court showing assignment being of the year 1955 (Pg 9 of the Affidavit dt 30.12.2021 filed by the State of Andhra Pradesh) as well as the deposition of DW1, Mandal Revenue Officer before the Ld.*

  Trial Court clearly demonstrates that there the assignment was one, which contained the condition of non-alienation.

- *In this regard, reliance may be placed on Sections 91 and 92 of the Indian Evidence Act, which cover evidence of documents including grants. Section 91 clearly states that no evidence of such document is acceptable "..except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible.." In the present case, the Plaintiffs/Petitioners have not produced the document/any admissible evidence in terms of the Indian Evidence Act to prove assignment to Harijan Govindu being prior to 1954.*

- *To the contrary, the Respondent State has produced the Extract of the Land Register showing the assignment to be of 1955 as well as the oral evidence of DW2 before the Ld. Trial Court, wherein he asserts that the assignment had a condition of non-alienation, which is not controverted by the Petitioner/Plaintiff in any manner.*

- *The Petitioner has relied on the full Bench judgment of the Hon'ble High Court in the case of Dharma Reddy v. Sub-Collector, Bodhan & Ors. AIR 1987 AP 160 (pg109- of the*

Compilation for Final Hearing on Behalf of the Petitioner). The said judgment, in para 2, frames the issue being that whether the operation of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 is retrospective. The said question was answered holding the operation of the Act to be retrospective, and any transfer of an assigned land even prior to coming into force of the Act to be illegal. It was held as follows:

> *"10. After having considered all aspects of the matter in depth, due regard having been had to the submissions made by the counsel for the writ petitioners agreeing with the views of the Second Division Bench in the judgment in W.P. Nos. 3972/78 and batch dt. 9-10-1980 V. C. Kondayya's case, (supra) we answer the question formulated for our decision in the affirmative holding that S. 3(1) of the Act not only prohibits transfer of the assigned lands on or after the commencement of the Act, but also declares retrospectively that all transfers of such assigned land which took place prior to the coming into force of the Act shall also be null and void, non est in the eye of law, and no right or title in such assigned land shall vest in any person acquiring the land by such transfer. Having thus answered the question of law, which arose out of the order of reference to the Full Bench we direct these writ petitions to be posted before a learned single Judge to deal with the other points, if any arising out of the pleadings, and to finally dispose them of..."*
>
> *(Emphasis supplied)*

- *On the issue of possession/cultivation, it is pertinent to point out that admittedly, as per the statement of the Petitioner as well as the finding of the Hon'ble High Court, the buildings had been erected and were operational by 1995. Thus, the possession must have been taken by the Government much earlier in order to construct the said building. However, the Petitioner/Plaintiff instituted the suit only in 1996. If the land had been in continuous possession/cultivation, it is submitted that the Petitioners/Plaintiffs would have known of the taking over by the Government/resumption, yet the Suit was filed years later, thereby demonstrating that the Petitioners were not in continuous possession/cultivation.*

- *Thus, viewed from any angle, the Plaintiffs/Petitioners did not have valid title to the land, as the land was land assigned to a*

landless poor, and could not be transferred in any manner. Such a sale is illegal and void ab initio. The assignee, Harijan Govindu could not have legally mortgaged the land, and therefore the Petitioners' vendor did not have any right/title to the land. Consequently, the sale deed based on which the Petitioners claim ownership is unlawful/void, and cannot create any right in favour of the Petitioners.

(ix) The Decree Was Passed by the Trial Court on Absolutely Erroneous Grounds:

(a) The Plaintiff did not Prove the Cause of Action:

- *As discussed above, the Ld. Trial Court did not base its decree on the case set up by the Petitioner/Plaintiffs. The Plaintiffs therein made vague assertions of valid title and the land being taken "without consent" and failed to adduce any documents/material to prove their title or the right of the assignee Harijan Govindu to transfer the land. On the contrary, the Mandal Revenue Officer gave clear and cogent oral evidence that the assignment to Harijan Govindu was conditional, and nonalienable. Yet, without examining any document to prove their title, the Ld. Trial Court instead placed the burden on the State/Defendant, and drew an adverse inference.*

- *In light of the Petitioner/Plaintiff's specific admission before the Ld. Trial Court that she did not know the conditions of the Patta, it is humbly submitted that she cannot now be permitted to claim knowledge of the date/conditions of the assignment, unsupported by any document/evidence.*

- *It is submitted that it is the most fundamental principle of civil law that the Plaintiff must prove its case/cause of action independently, which as rightly found by the Hon'ble High Court, the Petitioner herein failed to do.*

xxx *xxx* *xxx*

In the case of R. Hanumaiah v. State of Karnataka; (2010) 5 SCC 203, this Hon'ble Court has laid down extensive guidelines on how Trial Courts ought to consider title suits against the Government. Court held as follows:

"19. Suits for declaration of title against the government, though similar to suits for declaration of title against private individuals

differ significantly in some aspects. The first difference is in regard to the presumption available in favour of the government. All lands which are not the property of any person or which are not vested in a local authority, belong to the government. All unoccupied lands are the property of the government, unless any person can establish his right or title to any such land. This presumption available to the government, is not available to any person or individual. The second difference is in regard to the period for which title and/or possession have to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against government. This follows from Article 112 of Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire state and it is not always possible for the government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

20. Many civil courts deal with suits for declaration of title and injunction against government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the government contests the suit or not, before a suit for declaration of title against a government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the government, grant declaratory or injunctive decrees against the government by relying

upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted or admitted.

21. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the government : whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession - authorized or unauthorized; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title)."

(Emphasis supplied)

xxx xxx xxx

(c) In a Suit for Possession, the Burden of Proof of Ownership Lies on the Plaintiff as per Sec 110 of the Indian Evidence Act:

- *The Suit was filed in 1996, by which time the Government was admittedly in possession of the Subject Land. The Petitioners/Plaintiffs inter alia prayed for recovery of possession. In this regard, Section 110 of the Indian Evidence Act states that, "When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."*

- *The same has also been reiterated on a number of occasions by this Hon'ble Court, illustratively in the case of Chuharmal v. CIT; 1988 SCR (3) 788, wherein it was held by this Hon'ble Court that:*

"6…Section 110 of the Evidence Act is material in this respect and the High Court relied on the same which stipulates that when the question is whether any person is owner of anything of which he is shown to be in possession, the onus of proving that he is not the owner, is on the person who affirms that he is not the owner. In other

words, it follows from well settled principle of law that normally, unless contrary is established, title always follows possession..”

xxx xxx xxx

(x) The Petitioner’s Suit was Barred by Limitation:

- *It is the clear and unequivocal stand of the Respondent/State that the land was resumed vide proceedings dated 03.02.1989. however, the Suit was filed only in the year 1996, without any proper cause of action, vague and artfully drafted averments to conceal the delay, and thus the Suit was not maintainable.”*

E. ANALYSIS

37. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order.

38. Before adverting to the rival submissions canvassed on either side, we must try to understand as to who is a Pattadar: A “Pattadar” is essentially a landowner who holds a land deed (Patta) directly from the government and is registered in the land revenue accounts as the holder or occupant of the land, liable to pay land revenue.

39. To put it more elaborately, a “Patta” is a type of land deed issued by the government, indicating ownership or the right to hold land. Consequentially, the person who holds this land deed (Patta) is called a Pattadar. The Pattadars are responsible for paying land revenue to the government and their names are registered in the land revenue accounts of the government as a Pattadar, or as an occupant, or a khatadar. A Pattadar Passbook is a document that contains all the information about the landowner, including their landownership details. Revenue officials, such as Tehsildars, are responsible for maintaining

land records and verifying, modifying, and registering Pattas. The Patwari is the land record official at the village level, who maintains records of rights and other records concerning land.

40. Upon a comparison between a Land Patta Holder and a Land Allottee, it can be seen that a Land Patta Holder is a person who has been granted a Patta (a legal document) that confers rights over a specific piece of land, typically indicating ownership or entitlement to use the land. On the other hand, a Land Allottee is a person to whom land has been allotted by the Government or relevant authority, often under specific conditions and for designated purposes.

41. There exist several key differences between a Land Patta Holder and a Land Allottee. With respect to the nature of rights, it can be seen that a Land Patta Holder possesses rights that are often permanent, heritable, and transferrable, as established under various land revenue regulations. *For instance*, the Assam Land and Revenue Regulation, 1886, states that a Patta Holder has a permanent, heritable and transferable right of use and occupancy in their land. However, a Land Allottee, may not have the same level of rights. Allotment can be conditional and may not confer full ownership rights. *For example*, the conditions of allotment may restrict transferability or impose specific usage requirement.

42. As far as their legal standing is concerned, the Patta Holder is recognized as having a legal claim to the land, which can be defended in court. The Patta serves as evidence of ownership or entitlement. A Land Allottee, on the other hand, may have limited rights, especially if the allotment was made under specific government schemes or conditions that restrict ownership rights. For instance, the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (the "**Act of 1977**"), imposes restrictions on the transfer of assigned lands. While Land Patta Holders generally have the right to transfer their

interests in the land, subject to any conditions specified in the patta, the allottees may face restrictions on transferring their rights, particularly within a specified period or without government permission.

43. At this juncture, we must also look into a few relevant legal provisions, particularly the Act of 1971 and the Act of 1977 respectively, as they existed during the date on which, according to the respondents herein, the alleged resumption proceedings took place i.e., on 03.02.1989.

i. <u>The Andhra Pradesh (Record of Rights in Land and Pattadar Pass Books) Act, 1971</u>

44. A bare perusal of the Act of 1971 indicates that the purpose of a Pattadar Passbook is to ensure that there remains a record of rights in respect of a particular stretch of land. Therefore, a person holding a Pattadar Passbook is mandated under the said Act to have necessary entries of alienation, transfer of land, etc. The Act of 1971 is reproduced below:

> ***"1. Short title, extent and commencement:*** *- (1) This Act may be called the Andhra Pradesh (Record of Rights in Land and Pattadar Pass Books) Act, 1971.*
>
> *(2) It extends to the whole of the State of Andhra Pradesh.*
>
> *(3) It shall come into force in such area or areas and on such date or dates as the Government may, by notification, from time to time specify in this behalf."*

Section 2(4) defines the term "*land"* as under:

> *"(4) "Land" means land which is used or is capable of being used for purposes of agriculture, including horticulture but does not include land used exclusively for non-agricultural purposes"*

Section 2(4-a) defines who is *"Mandal Revenue Officer"* as under:

"[(4-a) "Mandal Revenue Officer" means the Officer-in charge of a Revenue Mandal and includes any Officer of the Revenue Department authorised by the Commissioner to perform the functions of the Mandal Revenue Officer under this Act"

Section 2(6) defines the term *"Occupant"* as under:

"(6) "Occupant" means a person in actual possession of land, other than a tenant or a usufructuary mortgagee."

Section 2(7) defines who is "*Pattadar"* as under:

"(7) "Pattadar" includes every person who holds land directly under the Government under a patta whose name is registered in the land revenue accounts of the Government as pattadar or an occupant or khatadar and who is liable to pay land revenue."

Section 2(9) defines "*Records of Rights"* as under:

"(9) "Record of Rights" means records prepared and maintained under the provisions, or for the purposes of this Act"

Sections 6, 6-A and 6-B read thus:

*"**6. Presumption of correctness of entries in record of rights -** Every entry in the record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of this Act.*

6-A. Passbook holder to have entries of alienation etc. recorded in Passbook:- (1) Every Owner, Pattadar, mortagee, occupant, or tenant of any land shall apply for the issue of a Passbook to the Mandal Revenue Officer on payment of such fee, as may be prescribed:

Provided that where no application is made under this sub-section, the Mandal Revenue Officer may suo-moto issue a passbook after following the procedure prescribed under sub-section (2) and collect the fee prescribed therefor.

(2) On making such application, the Mandal Revenue Officer shall cause an enquiry to be made in such manner as may be prescribed and shall issue a passbook in accordance with the Record of

Rights with such particulars and in such form as may be prescribed:

Provided that no such passbook shall be issued by the Mandal Revenue Officer unless the Record of Rights have been brought up to date.

(3) The entries in the passbook may be corrected either suo-moto or on application made to the Mandal Revenue Officer in the manner prescribed.

(4) The Government may prescribe by rules the manner in which the pass book may be issued to all owners, pattadars, mortgagees or tenants and to such other person in accordance with the Records of Rights.

(5) The passbook issued under sub-section (1) and duly certified by the Mandal Revenue Officer and any other authority as may be prescribed shall be the record of the title in respect of an owner and the rights and interests in land in respect of others. Every entry in the passbook shall be presumed to be correct and true unless the contrary is proved.

6-B. Passbook holder to have entries of alienation etc. recorded in passbook:- *Notwithstanding anything contained in the Registration Act, 1908, every passbook holder presenting a document of title-deed before a registering officer appointed under the said Act, on or after coming into force of the Andhra Pradesh Record of Rights in Land (Amendment) Act, 1980, relating to alienation or transfer recorded in the passbook by such registering officer or by the recording authority in respect of all other cases of transfers of land effected otherwise than under a registered document. "*

45. Thus, mere recording of right under the Act of 1971, by itself, may not be a conclusive proof of title and ownership, but it definitely records rights of the person. Once the recording is done, followed by the issuance of a *pattadar* pass book, the presumption in favour of the holder of the pass book is that he is having right in the land in question. In the case on hand, the appellants have a sale deed in their favour which never came to be questioned by the State at any point of time.

ii. The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977

46. The Act of 1977 restricts the transfer of assigned lands, indicating that an allotment does not equate to full ownership rights. The Act of 1977 is another piece of legislation, which is protective in its nature, with a view to prevent transfers and alienations of assigned lands. The said Act further provides for restoration of such lands to the assignees. Section 3 of the Act of 1977 declares that notwithstanding anything to the contrary in any other law for the time being in force, no land assigned to a landless poor person for the purpose of cultivation or as a house site shall be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer. However, such transfer of assigned land, if any, in favour of another landless poor person in good faith, for a valuable consideration, is saved. The Competent Authority is assigned with the duty to take possession of the assigned land after evicting the purchaser in possession and restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to do so, to resume the same to government for assignment to landless poor persons in accordance with the Rules.

47. Section 2(1) defines the expression "assigned lands". The same reads thus:

> *"**Section 2. Definitions** :- In this Act, unless the context otherwise requires,*
> *(1) "assigned lands" means lands assigned by the Government to the landless poor persons under the rules for the time being in force, subject to the condition of non alienation and includes lands allotted or transfered to landless poor persons under the relevant law for the time being in force relating to land ceilings; and the word "assigned" shall be construed accordingly."*

48. Section 2(3) defines who is a "landless poor person" and the same reads thus:

> *"(3) "landless poor person" means a person who owns an extent of land not more than 1.011715 hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land or such other extent of land as has been or may be specified by the Government in this behalf from time to time, and who has no other means of livelihood."*

49. Section 2(6) defines the term "transfer" as under:

> *"(6) "transfer" means any sale, gift, exchange, mortgage with or without possession, lease or any other transaction with assigned lands, not being a testamentary disposition and includes a charge on such property or a contract relating to assigned lands in respect of such sale, gift, exchange, mortgage, lease or other transaction."*

50. A plain reading of the above provisions would show that three types of land are treated as assigned lands for the purpose of the Act of 1977 : (i) the land assigned by the Government to a landless poor person under the rules for the time being in force; (ii) the land allotted/transferred to the landless poor person under relevant law relating to land ceilings; (iii) the land which is allotted or transferred subject to the condition of non-alienation. Any person who owns an extent of less than 1.011715 hectares (2.50 acres) of wet land or 2.023430 hectares (5.00 acres) of dry land is a landless poor person. Assigned land is heritable and it can be transferred by testamentary disposition. However, any sale, gift, exchange, lease, or any other transaction in relation to assigned land is treated as transfer and Section 3(1) declares that such land shall not be transferred and shall be deemed never to have been transferred. Any such transfer of assigned land shall not confer any right on the purchaser of such assigned land and the land shall not vest in any person acquiring the land by any such transaction.

51. Section 3 of the Act of 1977 reads thus:

> *"**Section 3. Prohibition of transfer of assigned lands :-** (1) Where, before or after the commencement of this Act, any land has*

been assigned by the Government to a landless poor person for purposes of cultivation or as a house site, then, notwithstanding anything to the contrary in any other law for the time being in force or in the deed of transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, 1ease, mortgage, exchange or otherwise.

(3) Any transfer or acquisition made in contravention of the provisions of subsection (1) or sub-section (2) shall be deemed to be null and void.

(4) The provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court or of any award or order of any other authority.

(5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house site on the date of such commencement."

52. Section 3(2) of the Act of 1977 declares that no landless poor person shall transfer any assigned land and no person shall acquire any assigned land. Sub-section (3) of Section 3 declares that any transfer or acquisition made in contravention of the provisions of sub-section (1) or sub-section (2) shall be deemed to be null and void. Sub-section (5) carves out an exception and a plain reading of sub-section (5) would show that nothing in sub-sections (1) to (4) of Section 3 shall apply to the assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee, prior to the commencement of the Act

provided that such person is in possession of the land "as a person cultivating the land or uses it as a house-site" on the date of such commencement.

53. Section 4 of the Act of 1977 reads thus:

> *"**Section 4. Consequence of breach of provisions of Section 3**:- (1) If, in any case, the District Collector or any other officer not below the rank of a Tahsildar, authorised by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may, by order -*
>
> *(a) take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and*
>
> *(b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment to landless poor persons in accordance with the rules for the time being in force:*
>
> *Provided that the assigned land shall not be so restored to the original assignee or his legal heir more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the Government for assignment to any other landless poor person.*
>
> *(2) Any order passed under sub-section (1) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by any officer or authority or Government in pursuance of any power conferred by or under this Act.*
>
> *(3) For the purposes of this section, where any assigned land is in possession of a person, other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved, that there is a contravention of the provisions of sub-section (1) of section 3."*

54. Section 4 deals with consequences of breach of provisions of Section 3 and mandates that the District Collector or any other officer not below the rank of a Tahsildar can take possession of the assigned land after evicting the person

in possession when provisions of sub-section (1) of Section 3 are contravened. Clause (b) of sub-section (1) of Section 4 requires the land to be restored to the original assignee or his legal heirs, or where it is not reasonably practicable, the same can be resumed for assignment to landless poor persons in accordance with the rules which are in force. Such restoration of land to the original assignee after resumption from the purchaser shall not be more than once. Even after restoration, if the land is transferred again, it shall be resumed to the Government for assignment to any other landless poor person. Sub-section (3) of Section 4 throws the burden on the person who is in possession of the assigned land to show that he has not contravened the provisions of Section 3(1) of the Act of 1977.

55. Few other provisions of the Act of 1977 namely, Sections 5, 6 and 7 respectively are also relevant for appreciating the question raised in this appeal and read as under:

> *"**Section 5. Prohibition of registration of assigned lands**:-- Notwithstanding anything in the Registration Act, 1908 on or after the commencement of this Act, no registering officer shall accept for registration any document relating to the transfer of, or the creation of any interest in, any assigned land included in a list of assigned lands in the district which shall be prepared by the District Collector and furnished to the registering officer except after, obtaining prior permission of the District Collector concerned for such registration.*
>
> ***Section 6. Exemption**:--Nothing in this Act shall apply to the assigned lands held on mortgage by the State or Central Government, any local authority, a Co-operative Society, a scheduled bank or such other financial institution owned, controlled or managed by a State Government or the Central Government, as may be notified by the Government in this behalf.*
>
> *Section 7. Penalty: - (1) Whoever acquires any assigned land in contravention of the provisions of sub-section (2) of section 3 shall be punished with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or both.*

(2) Whoever opposes or impedes the District Collector or any person authorised, in taking possession of any assigned land under this Act shall be punished with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both.

(3) No court shall take cognizance of an offence punishable under this section, except with the previous sanction of the District Collector."

56. Section 5 contains a non-obstante clause. It lays down that notwithstanding anything in the Registration Act, 1908, after coming into force of the Act of 1977, no registering officer shall accept registration of any document relating to transfer of any assigned land. Nonetheless, as per the second part of Section 5, if the transfer of assigned land is effected after obtaining prior permission of the District Collector concerned for registration, it is open for any registering officer to accept any document for registration relating to transfer of an assigned land. Section 6 enables the assignee to mortgage the assigned land to a Co-operative Society, scheduled bank and any financial institution owned, controlled or managed by the State Government or the Central Government as may be notified by the State Government. It is also necessary to notice that Section 7 prescribes imprisonment upto six months and fine up to Rs. 2,000/- in case when there is contravention of the provisions of Section 3(2) of the Act of 1977.

57. It may be noted that the word "Tahsildar" occurring in sub-section (1) of Section 4 was later substituted with the words "Mandal Revenue Officer" *vide* Act No. 32 of 1989 which amended the Act of 1977. The amendment was published in the Official Gazette on 05.12.1989. However, it has been brought to our attention that there neither exists any difference in rank nor in functions between these two officers and that the terms "Tehsildar" and "Mandal Revenue Officer" are used interchangeably. Therefore, the existence of the expression "Tahsildar" during the time of the alleged resumption proceedings

No. R.C.C. 184/89 dated 03.02.1989 and its subsequent substitution with the words "Mandal Revenue Officer" at a later point in time, does not bear any significant importance as far as the issue at hand is concerned.

iii. Oral Evidence on record

58. We must now look into the oral evidence on record. A perusal of the transcripts thereof, shows that the entire approach of the courts below in the present litigation was wrong. The Trial Court all throughout proceeded to consider whether the resumption of the subject land was in accordance with law, whereas, the High Court all throughout proceeded on the footing that since the subject land was an assigned land and there was a breach of conditions on which the land was assigned, the government was well within its power to resume the land for the purpose of construction of building for the Education Department. The High Court seems to have totally ignored or rather overlooked the fact that the appellants herein were indisputably in possession of the land from the year 1970 till the subject land was resumed and the appellants came to be dispossessed. The High Court failed to consider the legal effect of this period of twenty years.

59. It is in the aforesaid context that we must first look into the oral evidence of P.W.1- Y.Sunkalamma, the appellant no.1 (second plaintiff) and thereafter, we shall look into the oral evidence of D.W.1 – B.L. Chinnakesava Rao, Mandal Revenue Officer, who led evidence on behalf of the State.

60. The oral evidence of PW1 reads thus:

> *"CHIEF – EXAMINATION: First plaintiff is my husband, 3rd plaintiff is my son. I am 2nd plaintiff in this suit. First plaintiff died after filing of the suit. Hence, myself and 3rd plaintiff are brought on record as L.Rs. of deceased first plaintiff. The suit land called 'Thippalanaduma Chenu' is in our possession even prior to my marriage i.e., 10 to 15 years prior to my marriage. My marriage took place more than twenty years back. The plaint schedule land*

originally belonged to one Madiga Govindu and he is resident of Dinnedevarapadu. The said Govindu subsequently alienated the suit schedule property to one Perugu Swamy Reddy. Again witness says the said Govindu mortgaged the suit schedule property to Swamy Reddy even ten years prior to my marriage. The said Govindu did not pay the amount under mortgage to Swamy Reddy and hence he filed a suit against said Govindu. Hence, the suit is decree.

At request for continuation of chief-examination posted to 20.1.1999.

10.06.99: P.W. recalled and sworn in for continuation of chief examination: Accordingly preliminary decree was passed the properties were brought to sale. In the said sale one K. Ramanna purchased the said property in the court auction and took delivery of the same through court. Ex.A1 registration extract of sale certificate in E .P. 51/69 in O.S. 178/67. In turn Kurva Ramanna sold the schedule property to Yerikala Rosanna my father in law. Ex.A2 is the registration extract of sale deed dt. 10.12.70 for having conveyed sale by K. Ramanna in favour of Y. Rosanna my father in law. Yerikala Rosanna my father in law was in possession and enjoyment of said property during his life time. Considering the possession and enjoyment the Government has issued patta pass book in favour of my father in law in respect of suit schedule property and other properties. Ex.A3 is the such pass book issued by revenue authorities. My father in law has paid revenue during his life time. Ex.A4 to A6 are such land revenue receipts. Rosanna my lather in law died about 15 years back and after his death my husband has succeeded the suit schedule property being the legal representative of my father in law. My husband was in possession and enjoyment of suit schedule property during his life time. My husband died about two years back. My father in law and after him husband were in exclusive possession of the suit schedule property one have raised any objection to our peaceful possession including the defendants for suit schedule property. The suit schedule property is an agricultural land and we are raising crops in the suit schedule property. The Govt. took the possession of the suit schedule land for the purpose of constructing a school without our consent. The Govt. have no right what so ever to take possession of our land without our consent. 1st plaintiff my husband also gave application to the District Collector, Kurnool for taking possession of suit land without our consent by the defendants.

Ex.A7, is copy of such petition sent my husband to the Dist. Collector, Kurnool. The Dist. Collector did not act on Ex.A 7. I issued Sec. 80 CPC notice prior to filing of the suit. Ex.A8 is such notice dt. 4.1.96. Ex.A9 is served acknowledgment relating to Ex.A8 .notice. The Dist. Collector Kurnool also issued replied to our notice dt. 28.4.96, 31.5.96 and 6.5.96 Exs.A10 to A12 are copies of notices.

We belong to Yerikala Community which is a Schedule Tribes Caste. The M.R.O., Kurnool has issued caste certificate to us. Ex.A13 is the caste certificate issued by M.R.O., Kurnool. Ex.A14 is the nativity certificate issued by M.R.O., Kurnool. The allegation that we never in possession and enjoyment of suit schedule property is false. The suit land is not a assigned land. The defendants have no right what so ever to interfere our peaceful possession and enjoyment of our property. We pray the court declare our title and also deliver possession of the suit schedule property. Hence I pray the court to pass decree as prayed for.

Cross-examination: Deferred.

8.7.99: P.W. 1 recalled and sworn in for cross-examination by AGP:-

I do not know how Govindu the original owner acquired the suit schedule property. I do not know whether the Govt. has assigned the suit property to the said Govindu. I do not know the conditions mentioned in the D. Form patta assigned to Govindu in respect of suit schedule property. I do not know whether the Govt. Properties are situated surrounding the suit land in question. The suit schedule property and other properties situated near the suit property are not same level. It is not true to say that the suit land is not fit for cultivation. The Govt. has taken over the suit property to construct school building. It· is not true to say that the concerned MRO and revenue inspector enquired prior to taken over the suit property and they thought that the suit property is suitable to construct District Institution of Education Training Centre. I do not know whether the suit property is not fit for cultivation even as per village accounts. It is not true to say that the Govt. also made proclamations in the village prior to taken over of the suit land. It is not true to say that nobody has raised any objections including we the plaintiffs at any point of time for

taking over the suit property by Government for the above said purpose.

The suit property is situated within the limits of Dinnedevarapadu village. It is not true to say that since the suit land is a Govt. land it is free from encumbrances and the Govt. had every right to take back the suit land for the public purpose. It is not true to say that we the plaintiffs have no right in the suit schedule property whatsoever. I do not know whether the concerned M.R.O. handed over the suit property to District Educational Officer, Kurnool on 1.5.1989. I do not know whether the MRO has transferred the suit property to Dist. Educational Officer, Kurnool in the year 1989. It is true that the buildings were constructed in the year 1995 in the suit property. It is not true to say that the Govt. has constructed the buildings in the suit property for the purpose of interest of general public. It is not true to say that the Govt. constructed the buildings in the suit property as per board standing orders within their limits. It is not true to say that we the plaintiffs neither owners nor possessors of suit property. It is not true to say that we filed the present suit only to harass the Govt. with a view to extract money. It not true to say that our claim is barred by limitation. It is not true to say that the suit is also barred by limitation."

(Emphasis supplied)

61. Thus, P.W.1 in her examination-in-chief gave more than a fair idea as to how her father-in-law, Y. Rosanna acquired the subject land by way of a registered sale deed. She has deposed that the Government had issued Pattadar Passbook in favour of her father-in-law. Ex. A3 is the passbook that she produced before the Trial Court. Ex. A4 to Ex. A6 are the land revenue receipts produced in evidence. She has deposed that about fifteen years back her father-in-law passed away and her husband succeeded the subject land. Two years before the date of deposition, her husband also passed away. However, she along with her children remained in peaceful possession of the subject land. She has deposed about the issue of statutory notice to the State under Section 80 of the CPC. She has categorically deposed that the Subject Land is not an assigned

land. In her cross examination, she deposed that she had no idea if the government had assigned the Subject Land to Harijana Govindu and that she was also unaware of the conditions mentioned in the alleged "D" Form Patta assigned to Harijana Govindu.

62. We shall now look into the evidence of D.W.1 B.L. Chinnakesava Rao, the Mandal Revenue Officer. In his examination in chief, he has deposed as under:

> *"CHIEF - EXAMINATION: I have been working as M.R.O., Kurnool from 25.3.1998. I am acquainted with the facts of the case. We were not aware that one Govindanna mortgaged the suit schedule property to one Perugu Swamy Reddy of Dinnedevarapadu village. We were not aware the suit in O.S. 178/ 1967 which was filed by L. Rs of Swamy Reddy against L.Rs of Govindanna. The plaintiffs were never in possession and enjoyment of suit schedule properties. The Government assigned the suit schedule survey number to Harijana Govindanna. Similarly the Govt. have assigned lands to others in S. No. 451/23, 451/4 and 451/3, 549/1, 449/2, 449/3 and 449/4. The properties covered in the above said survey numbers are Government lands. The land was assigned to Harijana Govindu subject to certain conditions one among them the Government may resume land for any public purpose. The assignees have no right whatsoever to alienate D. Form patta lands. The suit land is a waste land, comprising rocky and pits. The suit land is sloppy land. The suit land is not fit for cultivation Govindu had no right whatsoever to mortgage assigned land to P. Swamy Reddy. The Government had resumed Ac. 31.19 cents from assignees for the purpose of construction of Dist. Institution of Education Training Centre. In the year 1989 the Govt. resumed the lands under RCB 184/89, dt. 3.2.1989. The M.R.O. and Mandal Surveyor inspected the suit land prior to resume of the suit land. The M.R.O. and surveyor have also prepared a report for resuming land for public purpose. Sub-Division records were also prepared and scrutinized by Dy. Inspector of survey for resuming of the land. There was a general notice and proclamation in the village inviting any objections for transfer of lands in favour of Educational Department. None have given any objections nor submitted anything in writing objecting for resuming the lands. The Grampanchayat, Dinnedevarapadu also gave consent for transfer of above land in favour of Education Department. The Education Department took possession of the suit land on 1.5.1989. The Education Department started construction in the year 1995 and entire*

buildings were constructed and the buildings are in operation. Govindanna the assignee have no right whatsoever over the suit schedule property or to alienate to anybody. We followed board standing orders and entire process was done in accordance with rules. The suit is barred by limitation. Since the Education Department running buildings in the suit property the question of declaring the plaintiff's title in respect of suit property does not arise. The plaintiff's are no way connected or related to original assignee Govindu. The plaintiffs are strangers and they have no way connected or related to suit property. Hence I pray the court to dismiss the suit."

(Emphasis supplied)

63. In his cross examination, he deposed as under:

"Cross-examination: We has record to show that in which year the Government assigned the suit land to Govindanna. I do not have patta readily on which the land was assigned to Govindanna. As per Board standing orders 15 we issue pattas on some conditions to assignees. The conditions embodied the BSO 15 only administrative conditions. Ex.A3 patta pass book was issued by our department in favour of first plaintiffs father. Ex.A4 to Ex.A6 land revenue receipts were issued by our department. The suit land is a Government land. After assigning the Government land to any body such land being called patta land. I do not know whether any notices were given to occupiers of suit land prior to resumption. We did not conduct any enquiry u/s 3 of A.P. assigned land prohibition Act as the assignee has violated the conditions embodied in D.Form patta.

It is not true to say that the suit land assigned to Govindanna on market value and that the suit land is patta land of Govindanna. I do not know whether the said Govindanna mortgaged the suit property to one P. Swamy Reddy in the year 1944. I do not know whether as the Govindanna did not redeem the mortgage, a suit was filed by P. Swamy Reddy and brought the suit property for sale and suit property was put into court auction in the year 1970. I was not aware whether one K. Ramanna purchased the suit property in the court auction. I was not aware whether the father of first plaintiff purchased the suit property from K. Ramanna in the year 1970. It is not true to say that the plaintiff's family were in possession and enjoyment of suit schedule property from 1970 onwards. I was not aware whether any reply was given by our department to the sec. 80 C.P.C. issued by the first plaintiff which is. Ex. A8. it is not true to say that we have not followed correct procedure and

manipulated records and occupied the lands forcibly from the possession of the plaintiff. It is not true to say that the plaintiffs are owners of the suit schedule land. It is not true to say that the Government had highhandedly occupied the suit land from the possession of the plaintiffs. It is not true to say that the suit land is a cultivable land and the plaintiff were raising crops in the suit land. The suit land is situated near to G. Pulla Reddy Engineering College, Kurnool. Recently house plots raised around the suit land. It is not true to say that the we the Government highhandedly occupied the suit property which belongs to plaintiffs.

Re-examination with permission: The other assignees never raised any objections for resuming their lands to construct buildings by Education Department. Further cross-examination: I do not know the names of other assignees."

(Emphasis supplied)

64. Thus, the first admission on the part of the Mandal Revenue Officer in his examination-in-chief is that the State had no idea or knowledge that Harijana Govindu had mortgaged the subject land in favour of one Perugu Swami Reddy of Village Dinnedevarapadu. He pleaded absolute ignorance of the Original Suit No. 178 of 1967 instituted by the legal heirs of Swamy Reddy against the legal heirs of Govindanna for enforcement of mortgage. He has thereafter said that the appellants herein (plaintiffs) were never in possession of the Subject Land. He has deposed that the Government had assigned the suit land in favour of Harijana Govindu. However, his cross examination is important. In his cross examination, he has stated that the State has the record to show the year in which the Government assigned the land to Harijana Govindu. However, the fact remains that no such record was produced. He has admitted that he does not have the "D" Form Patta said to have been issued in favour of Harijana Govindu and had no idea of the terms and conditions on which the land was assigned to Harijana Govindu. He admitted that Ex. A3 Patta Passbook was issued by the revenue department in favour of the first plaintiffs' father, i.e., the father-in-law of PW1 - Y. Sunkulamma.

He admits that Ex. A4 to Ex. A6 are the land revenue receipts issued by the revenue department in favour of the appellants. He admitted that if a government land is assigned to any person, the same assumes the character of being a Patta Land. He has said that he had no idea whether any notice was issued to the occupiers of the suit land prior to its resumption. He has admitted that no inquiry under Section 3 of the Act of 1977 was undertaken for the purpose of ascertaining whether the assignee had violated the conditions laid in the "D" Form Patta. He deposed that he had no knowledge whether any reply was given by the department to the Section 80 CPC notice or not. He denied that the family of the plaintiffs were in possession and enjoyment of the said schedule property from 1970 onwards.

65. Having regard to the oral as well as documentary evidence on record, the picture that emerges is as under:

a. The Subject Land belonged to Harijana Govindu. Whether it was an assigned land or was of his ownership, is not clear. If it is the case of the State that the same was an assigned land, the State has miserably failed to establish the same. They could have produced the record while asserting that in fact it was an assigned land and there was a "D" Form Patta issued in favour of Harijana Govindu.

b. Harijana Govindu had borrowed money from one Perugu Swamy Reddy. Harijana was not in a position to repay the money he had borrowed and in such circumstances, Perugu Swamy Reddy enforced the mortgage by filing civil Original Suit no. 178 of 1967. The same came to be decreed. The Subject Land was ultimately put to auction by the court. In the court auction, one Kuruva Ramanna purchased the same and Kuruva Ramanna in turn sold the subject land in favour of PW1's father-in-law by way of a registered sale

deed dated 10.12.1970. To this extent, the State has no say in the matter.

c. Indisputably, since the date of the registration of sale deed by Kuruva Ramanna in favour of Y. Rosanna i.e., the father-in-law of PW1, the plaintiffs remained in possession of the Subject Land till the time they were dispossessed by the State Authorities. Even this cannot be disputed in any manner by the State.

d. It appears that the State conceived the idea of putting up construction on few parcels of land owned by it other than the Subject Land. However, as the Subject Land is in between the parcels of land owned by the Government, they exerted pressure on the appellants herein to give up their land saying that the Subject Land was assigned to Harijana Govindu and he could not have mortgaged the land. Harijana Govindu, according to the State, could be said to have violated the terms and conditions of assignment.

e. Why did the State maintain silence all throughout or why the State has no answer to the issue of "D" Form Patta Passbook in favour of the appellants?

f. What is the explanation of the State in so far as the Ex. A4 to Ex. A6, i.e., the land revenue receipts are concerned? Why is the State silent on all this?

g. What is the basis for the State to say that the appellants at no point of time were in possession of the suit land?

h. The crux of the matter is that the State could not have taken over the land in a highhanded and arbitrary manner? In other words, could the State have resumed the land saying that the appellants were in illegal possession of the same without following due

process of law? It goes without saying that be it an assigned land or of individual ownership, if the State is in need of the land for any public purpose, it can always acquire the same in accordance with law, more particularly in accordance with the provisions of the Land Acquisition Act by paying appropriate compensation in terms of money. However, what the State did in the present case was nothing but an exhibit of raw power by taking over the possession forcibly. The matter of concern is that the State knew very well that the appellants were in lawful possession of the land for more than 20 years. Well, if the State was in need of the land occupied by the appellants, it could have informed the appellants that the land is required for public purpose and that the State intends to acquire the same and that they would be paid adequate compensation in terms of money in accordance with law. However, the intention of the State was to take over the possession without paying any compensation. In the process, what the State did was that it conveniently shut its eyes towards four things, viz. (i) the civil suit filed by the original mortgagee, (ii) the decree passed by the competent Civil Court, (iii) sale of the land by court auction and the sale certificate issued by the court, and (iv) the appellants purchasing the land in question by a sale deed from the person who had participated in the court auction and purchased the land in question.

i. It appears that way back in 1995, the construction was completed, and, in such circumstances, the appellants were left with no choice but to institute the suit.

66. We have been able to lay our hands on a very lucid and erudite decision rendered by the Bombay High Court more than a century ago i.e., in 1912, in ***Narayan Anandram Marwadi v. Gowbai, widow of Dhondiba*** reported in **ILR 37 Bom. 415**. We could not resist the temptation to refer to and rely upon this decision of the Bombay High Court. In the said case, the property of an agriculturist mortgagor was sold in an execution of money decree by the civil court and the auction purchaser's rights subsequently came to be vested in the mortgagee. As Section 22 of the Dekkhan Agriculturists' Relief Act, 1879 prohibited execution of sale of agriculturists' properties, the mortgagor treated the sale as void and sued to redeem the mortgage. The mortgagee, in turn, relied on the court-sale to contend that the mortgagor had no right to redeem. The Subordinate Judge, the District Judge on appeal and the High Court in second appeal held that the court-sale was void ─ but on Letters Patent Appeal, Scott, C.J., speaking for himself and Chandavarkar, J., held:

> *"Now the provisions of section 22 of the Dekkhan Agriculturists' Relief Act are provisions conferring upon members of a certain class great privileges in litigation. The section confers upon a person who is shown to be a member of the privileged class the right to resist the attachment or sale of any of his immovable property and to contend that if an attachment or sale took place in violation of the provisions of the section, such attachment or sale shall be held to be void.*
>
> *How then is the Court to know when it is authorized to attach and sell property and when it is not? The ordinary rule is that set out in the Civil Procedure Code, section 60, which reproduces section 266 of the Code of 1882. It provides that property liable to attachment and sale in execution of a decree is lands, houses, etc., belonging to the judgment-debtor. An agriculturist in order to resist the application of that general rule must, we think, show that he belongs to the privileged class so as to render section 22 of the Dekkhan Agriculturists' Relief Act applicable to his case. That conclusion seems to follow from the provisions of Sections 101, 102 and 103 of the Evidence Act. In the absence of proof we, therefore, hold that there is no reason to*

treat the immovable property sold by the Vinchur Court as the property of an agriculturist."

(Emphasis supplied)

67. Consequently, the suit was dismissed adopting the following dictum of Sir Lawrence Jenkins in ***Pandurang Balaji v. Krishnaji Govind*** reported in **(1903) 28 Bom. 125**:

> *"It is a general rule that in Courts of law only those facts can be taken to exist which are proved; so that it is manifest that in the absence of proof the exemption from liability to attachment or sale did not exist for the purpose of the execution proceedings. Therefore the executing Court had complete jurisdiction to make the order it did."*
>
> (Emphasis supplied)

68. The dictum as laid down in the decision referred to above of the Bombay High Court accords with our own view of the matter.

69. Having regard to the aforesaid, is there anything to indicate that the Subject Land is of the ownership of the Government? If there is a Pattadar Pass Book issued in favour of the appellants and if they have been able to establish that land revenue was also being paid over a period of years, then the appellants could be said to be owners of the suit land as Pattadars. Unfortunately, even the "D" Form Patta admitted by the State to have been issued in favour of the Harijana Govindu is not on record. Had it been on record, we could have looked into its terms and conditions. It appears from the evidence on record that the Pattadar Passbook was issued in favour of the appellants keeping in mind their long-standing possession and occupancy on the Subject Land by virtue of the sale deed dated 10.12.1970. Why the State remained silent right from the time Harijana Govindu mortgaged the land? Why no action was taken from 1943 onwards till the time the State decided to put up construction of a building for the Education Department? It is difficult to believe that the

State Authorities had no idea of the developments that had taken place over a period of almost forty-five years.

70. The oral and documentary evidence should now be tested on the anvil of Section 113 of the Bhartiya Sakshya Adhiniyam, 2023 (for short, the "**BSA**") which corresponds to Section 110 of the repealed Indian Evidence Act, 1872 (for short, the Evidence Act") .

iv. Section 113 of the Bhartiya Sakshya Adhiniyam, 2023

71. Section 113 of the BSA reads as follows:

> *"When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."*

72. The Section embodies the well-recognised principle that possession is *prima facie* proof of ownership. A person in possession is entitled to remain in possession until another person can disclose a better title under Section 113 of the BSA. Therefore, once the plaintiff proves that he has been in possession of the suit property, the burden of proving that the plaintiff is not the owner is on the defendant who affirms that the plaintiff is not the owner. The Section does not make a distinction between the Government and a private citizen. Section 113 is, therefore, equally applicable where a Government claims to be the owner or challenges the ownership of the plaintiff who is in possession of the property. It is not disputed that before the possession of the Subject Land was taken over, the plaintiffs were in possession of the property for more than twenty years. The onus, therefore, under section 113 of the BSA was on the State to prove that the Government had a subsisting title to the Subject Land.

73. In ***M. Krishna Aiyar v. The Secretary of State for India*** reported in **(1910) I.L.R. 33 Mad. 173**, a Bench of the Madras High Court held that:

> *"Where in a suit for declaration of title against the Government the plaintiff proves possession for a period of more than 12 years, the Government must prove that it has a subsisting title. When the Government fails to prove such title or possession within sixty years, the plaintiff is entitled to a declaration of title and not merely to a declaration that he is lawfully in possession of such land."*
>
> (Emphasis supplied)

74. It must be remembered that what Section 113 of the BSA does is to raise a statutory presumption in favour of a person who is in possession that he is the owner and places a burden upon the other persons who say that the plaintiff is not the owner.

75. Section 113 of the BSA provides that when the question is whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. The application of this Section to lands claimed by the Government or the Municipality has been considered by the Madhya Pradesh High Court in ***Jagannath Shivnarayan v. Municipal Commissioner, City Municipality, Indore*** reported in **AIR 1951 MB 80**.

76. Sanghi, J., discussed the case law on the subject and held that to apply the provisions of Section 110 of the Evidence Act (now section 113 of the BSA), to a plaintiff's possession, the possession must be founded on a '*prima facie*' right. According to the learned Judge, mere acts of the user would not lead to a presumption of title in case the possession was '*prima facie*' not proved to be lawful.

77. The same view was taken by a Division Bench of the Bombay High Court in ***Suraji Fulaji v. Secretary of State*** reported in **AIR 1937 Bom 193**. It was a suit against the Government for declaration that the plaintiff was the owner

of certain plots in a village. The plaintiff adduced oral evidence to show that he had been using a large area of land for the purposes of tethering cattle and storing grass and that he had been in possession thereon for a number of years. It was also proved by him that he had erected badges to the west and south of the plot.

78. In the aforesaid case, it was held that although the Government had not succeeded in rebutting the plaintiff's evidence as to its act of user, yet it could not be said that the plaintiff had been able to prove such possession as would raise a presumption of title in his favour. Broomfield, J., approved the view taken by Ranade, J. in ***Hanmantrao v. Secretary of State*** reported in **(1901) 25 Bom 287** and held that to come within the scope of Section 110 of the Evidence Act, the possession of the plaintiff must be based on a '*prima facie*' right. This case was followed by another Division Bench of the same High Court in ***The Secretary of State for India in Council v. Chimanlal Jamnadas and others*** reported in **AIR 1942 Bom 161.**

79. ***Chimanlal Jamnadas*** (supra) was also a suit against the Government for declaration that certain property consisting of land was of the absolute ownership of the plaintiff. The plaintiff had proved some kind of possession, and the question arose whether it was sufficient to give rise to a presumption under Section 110 of the Evidence Act. Divatia, J., discussed the case law on the subject and observed as follows:

> *"[...] It is necessary, in my opinion, therefore for the plaintiffs to prove that their possession was of such a character as would lead to the presumption of title, and not such a sort of possession as would be regarded as wrongful in its origin. In my opinion it could not be the law that a man might usurp somebody else's land and without the plea of adverse possession say that 'I am in long possession of this land. I have erected buildings on it, and although, I have no title in my favour and even though I have got possession of the land by usurpation or encroachment, I am entitled to remain in possession under Section 110 and that nobody can oust me'. The*

presumption under Section 110 would apply only if the conditions are satisfied, viz., that the possession of the plaintiff is not 'prima facie' wrongful, and, secondly, the title of the defendant is not proved."

(Emphasis supplied)

80. In ***Gurunath Manohar Pavaskar v. Nagesh Siddappa Navalgund*** reported in **(2007) 13 SCC 565** this Court held as under:

"12. A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of the Evidence Act."

81. In ***Nair Service Society Ltd. v. Rev. Father K.C. Alexander*** reported in **AIR 1968 SC 1165**, dealing with the provisions of Section 110 of the Evidence Act, this Court held as under:

"17. [...]possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides."

(Emphasis supplied)

82. In ***Chief Conservator of Forests, Govt. of A.P. v. Collector*** reported in **(2003) 3 SCC 472**, this Court held that:

"20. ... presumption, which is rebuttable, is attracted when the possession is prima facie lawful and when the contesting party has no title."

(Emphasis supplied)

83. The principle enshrined in Section 110 of the Evidence Act (now Section 113 of the BSA) is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their title over the land in question may be. It is for this purpose that the provisions of Section 6 of the Specific Relief Act, 1963,

Section 145 of the Code of Criminal Procedure, 1973, and Sections 154 and 158 of the India Penal Code, 1860, were enacted. All the aforesaid provisions have the same objective. The said presumption is read under Section 114 of the Evidence Act and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of wastelands, or where nothing is known about possession one way or another. Presumption of title as a result of possession can arise only where facts disclose that no title vests in any party and the possession of the plaintiff is not *prima facie* wrongful. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It, in fact, means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment, etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favour his version. Even a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act. [See: ***State of Andhra Pradesh and Ors. v. Star Bone Mill and Fertiliser Company*** reported in **(2013) 9 SCC 319**]

84. Section 113 of the BSA as discussed aforesaid, embodies the principle that possession of a property furnishes *prima facie* principle of ownership of the possessor and casts burden of proof on the party who denies his ownership.

The presumption, which is rebuttable, is attracted when the possession is *prima facie* lawful and when the contesting party has no title.

85. The appellants could be said to have established their possession over the suit land in question right from the year 1970. There is cogent and convincing evidence in this regard. They were in peaceful enjoyment of the suit land in question. In our opinion, the respondent State has not been able to prove its title to the suit land. Just because the suit land is surrounded by few other parcels of land owned by the Government, that by itself will not make the suit land of the ownership of the Government. If the Government claims title over the land, it has to establish it by producing relevant records in the form of revenue records etc. In our opinion, the State has failed to advance any credible evidence on record to rebut the presumption. Consequently, the appellants have Pattadars' title to the suit land in question.

86. There was no need for the High Court to look into and follow the dictum as laid in its Full Bench decision in the case of ***Dharma Reddy*** (supra). The Full Bench decision in ***Dharma Reddy*** (supra) has only discussed the retrospective effect of the Act, 1977.

v. <u>How is the Court expected to consider title suits against the Government</u>

87. In the case of ***R. Hanumaiah v. Secretary to Govt. of Karnataka, Revenue Department*** reported in **(2010) 5 SCC 203**, this Court has explained as to how the Trial Courts are expected to consider title suits against the Government. This Court held as follows:

> ***"19.*** *<u>Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals differ significantly in some aspects.</u>* ***<u>The first difference is in regard</u>***

to the presumption available in favour of the Government. *All lands which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the Government, unless any person can establish his right or title to any such land. This presumption available to the Government, is not available to any person or individual.* ***The second difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title****. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding* ***thirty years*** *will have to be established to succeed in a declaratory suit for title against the Government. This follows from Article 112 of the Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by the Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the Government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.*

20. *Many civil courts deal with suits for declaration of title and injunction against the Government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against the Government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before a suit for declaration of title against a Government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the Government, grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings that plaint*

averments which are not denied or traversed are deemed to have been accepted or admitted.

21. *A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the Government: whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the Government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession—authorised or unauthorised; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).”*

(Emphasis supplied)

88. We are of the view that the following principles, as elucidated in ***R. Hanumaiah*** (supra), must govern the adjudication of declaratory title suits against the Government:

i. Suits for declaration of title against the government differ from suits against private parties on two counts:

   a. First, there is a presumption in favour of the Government in such suits, as all lands which are unoccupied or not vested in any individual or local authority, are presumed to belong exclusively to the Government.

   b. Secondly, there is an additional burden of proof on the party seeking declaration of title against the Government. The plaintiff has to establish its possession over the land in question for a period of thirty years as opposed to twelve years in the case of adverse possession against a private party.

ii. A decree declaring title against the Government must not be passed casually. Before granting any such decree, the trial court must ensure

that the plaintiff has furnished adequate documentary evidence, either through title deeds tracing ownership for over thirty years or by establishing adverse possession for a period of thirty years.

iii. The trial court must verify whether the name of the plaintiff has been recorded as the owner, holder, or occupant in the relevant revenue or municipal records for more than thirty years.

iv. Finally, the trial court must carefully scrutinize the nature of the possession as may be asserted, determining whether the same is authorized or unauthorized, permissive or casual, furtive or clandestine, as well as open, continuous, and hostile, or implied by title, to ensure that public property is not inadvertently converted into private ownership by unscrupulous elements.

89. As held by this Court in ***R.V.E Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and Another*** reported in **(2003) 8 SCC 752**, whether a civil or a criminal case, the anvil for testing of "proved", "disproved" and "not proved", as defined in Section 3 of the Evidence Act, is one and the same. A fact is said to be "proved" when, considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought to, under the circumstances of a particular case, act upon the supposition that it exists. It is the evaluation of the result drawn by the applicability of the rule, which makes the difference. The relevant portion of the said judgment is reproduced below:

> *"The probative effects of evidence in civil and criminal cases are not, however, always the same and it has been laid down that a fact may be regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for a conviction in a criminal case. Best says: 'There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of probability, due regard being had to the burden of proof, is a sufficient basis of decision: but in the latter, especially when the offence charged amounts to treason or*

felony, a much higher degree of assurance is required.' (Best, § 95) While civil cases may be proved by a mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt." (See Sarkar on Evidence, 15th Edn., pp. 58-59.)"

(Emphasis supplied)

90. In the words of Denning, L.J. (***Bater* v. *Bater*** reported in **(1950) 2 All ER 458**):

> *"[…]It is of course true that by our law a higher standard of proof is required in criminal cases than in civil cases. But this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard.*
>
> *As Best, C.J., and many other great judges have said, "in proportion as the crime is enormous, so ought the proof to be clear". So also in civil cases, the case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature; but still it does require a degree of probability which is commensurate with the occasion. Likewise, a divorce court should require a degree of probability which is proportionate to the subject-matter."*
>
> (Emphasis supplied)

91. Agreeing with this statement of law, Hodson, L.J. said:

> *"Just as in civil cases the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others." (Hornal v. Neuberger Products Ltd. [(1956) 3 All ER 970 : (1957) 1 QB 247 : (1956) 3 WLR 1034 (CA)] , All ER at p. 977 D).*

92. In a suit for recovery of possession based on title, it is for the plaintiff to prove his title and satisfy the court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to

be restored to him. However, as held in ***Addagada Raghavamma v. A. Addagada Chenchamma*** reported in **AIR 1964 SC 136**, there is an essential distinction between burden of proof and onus of proof. Burden of proof lies upon a person who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title.

vi. <u>Section 80 of CPC</u>

93. Before we close this matter, we must say something as regards Section 80 of the CPC. It is not in dispute that in the case on hand, before the institution of the suit by the appellants herein, they had issued statutory Notice under Section 80 of the CPC. However, there is nothing on record to indicate that any reply to the same was given by the State Authorities.

94. Sections 79, 80 and Order XXVII respectively of the CPC deal with the procedure where the suits are brought by or against the Government or Public officers acting in an official capacity. Section 79 is a procedural provision and contains provisions in relation to the suits by or against the Government. It states that in a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be—

(a) in the case of a suit by or against the Central Government, the Union of India, and

(b) in the case of a suit by or against a State Government, the State.

95. Section 80 of the CPC deals with the provisions relating to notice which is a condition precedent before filing a suit against the government or against a public servant. It states that –

> *"(1) Save as otherwise provided in sub-section (2), no suits shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months after notice in writing has been delivered to, or left at the office of—*
>
> *(a) in the case of a suit against the Central Government, except where it relates to a railways, a Secretary to that Government;*
>
> *(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;*
>
> *(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.*
>
> *(2) A suit to obtain an urgent or immediate relief against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit.*
>
> *Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief needs to be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).*
>
> *(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason*

of any error or defect in the notice referred to in sub-section (1), if in such notice—

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."

96. Order XXVII, CPC enumerates the following:

i. This Order deals with the Suits by or against the government or public officers in their official capacity.

ii. Rule 1 of Order XXVII states that in any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

iii. Rule 2 of Order XXVII states that the persons being *ex-officio* or otherwise authorized act for the Government in respect of any judicial proceeding shall be deemed to be recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

iv. Rule 3 of Order XXVII states that in suits by or against the Government, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the appropriate name as provided in section 79 of CPC.

v. Rule 4 of Order XXVII provides that the Government Pleader shall be the agent of the Government for the purpose of receiving processes against the Government by the Court.

vi. Rule 5 of Order XXVII provides that the Court shall, in fixing the day for the Government to answer the plaint, allow a reasonable time for the necessary communication with the Government through the proper channel.

   a. Rule 5A of Order XXVII provides that the Government will be joined as a party in a suit against a public officer in respect of any act alleged to have been done by him in his official capacity.
   b. Rule 5B of Order XXVII deals with the duty of the Court in suits against the Government or a public officer to assist in arriving at a settlement.

vii. Rule 6 of Order XXVII provides that the Court can direct the attendance of a person who is able to answer any material question relating to the suit against the Government.

viii. Rule 7 of Order XXVII deals with the extension of time to enable public officers to make reference to the Government.

ix. Rule 8 of Order XXVII provides that where the government undertakes a defense of suit against a public officer, the government pleader will apply to the Court for the same and the Court upon such application shall cause a note of his authority to be entered in the register of civil court. If no application is made by a government pleader, then the case shall proceed as in a suit between private parties:

   a. Rule 8A of Order XXVII provides that no such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government.
   b. Rule 8B of Order XXVII contains the definitions of Government and Government pleader.

vii. Object of Notice in Government Suits

97. The primary objective behind Section 80 of the CPC is to provide the Government or a public officer with an opportunity to assess the legal merits of a claim and potentially settle it if it appears to be just and reasonable.

98. Unlike private parties, the Government is expected to objectively and impartially evaluate the matter, seek appropriate legal advice, and make decisions in public interest within the two-month period mandated by the section. This serves to save both time and taxpayer's money by preventing needless litigation.

99. The legislative intent is to ensure that public funds are not squandered on unnecessary legal battles. The provision of the notice is intended to prompt the Government or public officer to engage in negotiations for a fair settlement or, at the very least, to explain to the potential plaintiff why their claim is being contested.

100. In the case of ***Bihari Chowdhary and another v. State of Bihar and others*** reported in **(1984) 2 SCC 627**, this Court emphasised the purpose of the provision, stating that it is a measure of public policy aimed at allowing the Government or the relevant officer to scrutinise the proposed claim and, if deemed just, take prompt action to settle it, thereby avoiding protracted litigation and saving public resources.

101. The Government's obligation differs from that of private parties, as it is expected to objectively assess the claim, seek legal advice as necessary, and make decisions in public interest within the stipulated two-month timeframe

102. The overarching goal of this mandatory provision is to promote justice and the public good by minimising unnecessary legal disputes.

viii. Essentials of Section 80 CPC

103. A notice issued under Section 80 must include:

i. The name, description, and place of residence of the person providing the notice.

ii. A statement outlining the cause of action.

iii. The relief sought by the plaintiff.

104. When determining whether the essential requirements of the Section have been met, the court should consider the following questions:

(i) Has the notice provided adequate information to allow the authorities to identify the person issuing the notice?

(ii) Have the cause of action and the relief sought by the plaintiff been sufficiently detailed?

(iii) Has the written notice been delivered to or left at the office of the appropriate authority as specified in the section?

(iv) Has the suit been initiated after the expiration of two months following the delivery or submission of the notice, and does the plaint include a statement confirming that such notice has been provided as required?

105. A statutory notice holds significance beyond mere formality. Its purpose is to provide the Government or a public officer with an opportunity to reconsider the matter in light of established legal principles and make a decision in accordance with the law. However, in practice, such notices have often become empty formalities.

106. The administration frequently remains unresponsive and fails to even inform the aggrieved party why their claim has been rejected.

107. In the case of ***State of Punjab v. Geeta Iron & Brass Works Ltd.*** reported in **(1978) 1 SCC 68**, Krishna Iyer J. emphasised the need for accountability

of Governments regarding wasteful litigation expenses borne by the community due to governmental inaction. It was highlighted therein that the statutory notice under Section 80 of the CPC is meant to prompt the State to negotiate a fair settlement or, at the very least, to explain to the affected party why their claim is being resisted.

108. However, Section 80 has become more of a ritual due to the administration's lack of responsiveness, despite recommendations from the Central Law Commission for its removal from the Code.

109. Krishna Iyer J. further noted that opportunities for dispute resolution through arbitration are often missed due to governmental inaction. He advocated for a litigative policy that prioritises conciliation over confrontation, suggesting that it should be a directive for the State to empower its legal officers to resolve disputes rather than prolonging them in court.

110. In ***Geeta Iron & Brass Works Ltd.*** (supra) referred to above, this Court observed thus:

> *"**3.** While dismissing the Special Leave petition for the reasons mentioned above, we would like to emphasise that the deserved defeat of the State in the Courts below demonstrates the gross indifference of the administration towards litigative diligence. In the present case a notice under Section 80 CPC was sent. No response. A suit was filed and summons taken out to the Chief Secretary. Shockingly enough, the summons was refused. An ex parte proceeding was taken when the lethargic Government woke up.*
>
> ***4.** We like to emphasise that Governments must be made accountable by Parliamentary social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under Section 80 CPC is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now Section 80 has become a ritual because the administration is often unresponsive and hardly lives up to the Parliament's expectation in continuing Section 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for settling the dispute through arbitration*

was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in Court. We are constrained to make these observations because much of the litigation in which Governments are involved adds to the case load accumulation in Courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in Courts of cases which deserve to be attended to."

(Emphasis supplied)

111. In ***Bihari Chowdhary*** (supra), this Court observed thus:

"3. ... The effect of the section is clearly to impose a bar against the institution of a suit against the Government or a public officer in respect of any act purported to be done by him in his official capacity until the expiration of two months after notice in writing has been delivered to or left at the office of the Secretary to Government or Collector of the concerned district and in the case of a public officer delivered to him or left at his office, stating the particulars enumerated in the last part of sub-section (1) of the section. When we examine the scheme of the section it becomes obvious that the section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the Government or a public officer, the Government or the officer concerned is afforded an opportunity to scrutinise the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted. There is clearly a public purpose underlying the

mandatory provision contained in the section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months' time to Government or a public officer before a suit can be instituted against them. The object of the section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.

4. *When the language used in the statute is clear and unambiguous, it is the plain duty of the Court to give effect to it and considerations of hardship will not be a legitimate ground for not faithfully implementing the mandate of the Legislature.*

5. *The Judicial Committee of the Privy Council had occasion to consider the scope and effect of Section 80 CPC in an almost similar situation in Bhagchand Dagadusa v. Secretary of State [AIR 1927 PC 176 : 54 IA 338, 357] . In that case though a notice had been issued by the plaintiffs under Section 80 CPC on June 26, 1922, the suit was instituted before the expiry of the period of two months from the said date. It was contended before the Privy Council, relying on some early decisions of High Court of Bombay, that because one of the reliefs claimed in the suit was the grant of a perpetual injunction and the claim for the said relief would have become infructuous if the plaintiffs were to wait for the statutory period of two months prescribed in Section 80 CPC before they filed the suit, the rigour of the section should be relaxed by implication of a suitable exception or a qualification in respect of a suit for emergent relief, such as one for injunction. That contention did not find favour with the Privy Council and it was held that Section 80 is express, explicit and mandatory and it admits no implications or exceptions. The Judicial Committee observed:*

> *"To argue, as the appellants did, that the plaintiffs had a right urgently calling for a remedy, while Section 80 is mere procedure, is fallacious, for Section 80 imposes a statutory and unqualified obligation upon the Court...."*

This decision was subsequently followed by the Judicial Committee in Vellayan v. Madras Province [AIR 1947 PC 197 : (1946-47) 74 IA 223] . The dictum laid down by the Judicial Committee in Bhagchand Dagadusa v. Secretary of State for India [AIR 1927 PC 176 : 54 IA 338, 357] , was cited with approval and followed by a Bench of five Judges of this Court in Sawai Singhai Nirmal Chand v. Union of India [AIR 1966 SC 1068 : (1966) 1 SCR 986 : 1966 Mah LJ 371] .

> ***6.*** *It must now be regarded as settled law that a suit against the Government or a public officer, to which the requirement of a prior notice under Section 80 CPC is attracted, cannot be validly instituted until the expiration of the period of two months next after the notice in writing has been delivered to the authorities concerned in the manner prescribed for in the section and if filed before the expiry of the said period, the suit has to be dismissed as not maintainable.*
>
> ***7.*** *On behalf of the appellants, strong reliance was placed on the decision of a learned Single Judge of the High Court of Kerala in Nani Amma Nannini Amma v. State of Kerala [AIR 1963 Ker 114 : 1962 Ker LJ 1267] . Therein the learned Judge has expressed the view that Section 80 is not a provision of public policy and there is nothing in the section expressly affecting the jurisdiction of the Court to try a suit instituted before the expiry of the period prescribed therein. The reasons stated by the learned Judge in justification of his taking the said view despite the clear pronouncement of the Judicial Committee of the Privy Council in Bhagchand case [AIR 1927 PC 176 : 54 IA 338, 357] do not appeal to us as correct or sound. In the light of the conclusion expressed by us in the foregoing paragraphs about the true scope and effect of Section 80 CPC, the aforecited decision of the learned Single Judge of the Kerala High Court cannot be accepted as laying down good law.*"
>
> (Emphasis supplied)

112. In ***Raghunath Das v. Union of India and another*** reported in **1968 SCC OnLine SC 199**, this Court observed that the object of notice contemplated by Section 80 of the CPC was to give to the concerned Government and public officers, an opportunity to reconsider the legal position and to make amends or settle the claim, if so advised, without litigation.

113. The purpose of law is the advancement of justice. The least that was required in the present case was for the State Authorities to acknowledge the notice issued by the appellants herein and inform them as regards their stance. We make it abundantly clear that the Public Authorities must take statutory notice issued to them in all seriousness. The Public Authorities must not sit over such

notices and force the citizens to the vagaries of litigation. They are expected to let the plaintiff know their stand within the statutory period or in any case before he embarks upon the litigation. In certain cases, courts may be obliged to draw adverse presumption against the Public Authorities for not acknowledging the notice or telling the plaintiff of its stand and in the absence of that, a stand taken during the course of trial may be considered as an afterthought. This is exactly what has happened in the present case.

114. In view of the foregoing discussion, we should have allowed this appeal and decreed the suit in favour of the appellants herein. We could have directed the State Authorities to put the appellants back in possession. However, it is too late in the day to pass such a decree as it is going to be extremely difficult to give effect to such a decree. The construction stood completed almost thirty years back. It would be too much for this Court to ask the State Authorities to demolish that part of the construction made over the suit land. In such circumstances, we have reached the conclusion that the State must be asked to compensate the appellants in terms of money.

ix. <u>Payment of compensation in cases of resumption of land.</u>

115. In ***Land Acquisition Officer-cum-R.D.O. v. Mekala Pandu***, reported in **2004 SCC OnLine AP 217**, a Full Bench comprising of 7 Judges had to be constituted in the High Court of Andhra Pradesh for the purpose of answering the reference – "*whether the claimants are entitled to payment of compensation under the provisions of the Land Acquisition Act, 1894 (for short, the Act, 1894") when the assigned lands are resumed by the Government for a public purpose*?"

116. For the sake of clarity, we find it necessary to give a background of how the aforesaid question came to be referred to the High Court in ***Mekala Pandu***

(supra). The High Court had the occasion to address the issue of compensation in lieu of assigned lands resumed by the Government initially in ***State of A.P. and Anr. v. P. Peda Chinnayya & Ors.***, reported in **1996 SCC OnLine AP 60**, wherein it held thus:

> *"Where the Government resorts to the provisions of the Act for acquisition of the patta lands without resorting to the terms of the grant for resumption, it is liable to pay compensation under the Act, but such compensation will be only the market value of the interest of the owner or the assignee of the land, subject to the clog. In such cases of acquisition, the claimant would also be entitled to consequential reliefs, such as those of solatium and interest etc., under the Act. In a case where the patta lands are resumed by the Government, the assignees cannot claim compensation under the Act, but can claim compensation equal to the market value of their interest in the land, subject to the clog. In such cases, no solatium may be payable but interest may be claimed on the amount of compensation from the date of dispossession and till the date of payment of compensation. In a case where the assignees are dispossessed from their patta lands without resuming the lands in terms of the grant and/or initiation of proceedings under the Act, the Government may be directed to initiate proceedings under the Act and to pay compensation under the Act as indicated."*

117. The very same issue as above once again was referred to and came up for consideration before another Full Bench of the Andhra Pradesh High Court in ***State of Andhra Pradesh v. Bondapalli Sanyasi***, reported in **2001 SCC OnLine AP 1037**. The reference in the matter reads thus:

> *"Furthermore, we are prima facie of the opinion that that part of the law laid down by the judgment of the Full Bench that the plaintiffs would be entitled to the market value together with interest may not be correct, particularly, in view of the fact that the right of assignees of the Government land is subordinate to the State. The lands assigned under such patta are resumable. In that view of the matter, they may not be treated to be owners of the lands so as to claim entire compensation calculated at the*

market value for acquisition thereof under the Land Acquisition Act."

118. That is how the matter once again came up for consideration before a larger five Judge Bench in ***Bondapalli Sanyasi*** (supra). While answering the reference, the High Court observed and held that:

> *"34. (...) the Full Bench committed error insofar as it held that where patta lands are resumed by the Government, the assignee would be entitled to compensation which would be equal to the market value of their interest in the land subject to the clog. Quantum of damages has to be ascertained having regard to the fact situation of each case. The right of the State to resume land is conditional only to the extent referred to in D-Form patta. Once such conditions are fulfilled, which have been done in the instant case, no grant of compensation would be payable towards resumption of land. Compensation may, however, be payable if lands have not been resumed by following due process of law. The act of the State in such cases would be tortuous in nature."*

119. However, the correctness of the view taken in ***Bondapalli Sanyasi*** (supra) came to be challenged before a Division Bench, which once again referred the matter to another Bench consisting of five Judges. When the matter was taken up, objections were raised by the Government Pleader *inter alia* contending that the Division Bench is bound by the decision of the five Judge Bench in ***Bondapalli Sanyasi*** (supra) and, therefore, it was not correct to make a Reference to a Bench of five Judges.

120. As a consequence, the Bench of five Judges, having regard to the fact that the subject matter that arose for its consideration was of very great public importance, placed the matter before the Chief Justice for constitution of a larger Bench of seven Judges to resolve the issue in public interest. That is how the matter came to be heard by seven Judges in ***Mekala Pandu*** (supra).

121. The question that fell for the consideration in ***Mekala Pandu*** (supra) was whether the terms of grant or patta enabling the State to resume the assigned

land for a public purpose without paying compensation equivalent to the market value of the land to the assignees, are valid in law. In other words, whether such restrictive conditions or covenants suffer from any constitutional infirmity? Answering the question, the Full Bench (seven Judges) held as under:

> "*81. The State while directing no compensation be paid equivalent to the market value of the assigned lands never took into consideration and had any regard to the length of time the land held by the grantee or assignee, the social objectives for which the assignment had been made by the State in discharge of its constitutional obligation of providing public assistance to the weaker sections of the society, the improvements or developments upon the land made by the assignees on any legitimate expectation of continuance of the assignment, heritable nature of the right under the grant, etc.*
>
> *82. The question is whether the 'no compensation clause' imposed in the grant of assignment, in effect, requires the assignee to relinquish some constitutional right? Whether the conditions imposed at the time of assignment are "unconstitutional conditions"?*
>
> *83. The assignees are constitutional claimants. The constitutional claim cannot be subjected to governmental restrictions or sanctions except pursuant to the constitutionally valid rule or law. There is no legislation enacted by the State compelling it to assign the lands to the weaker sections of the society. The State obviously assigned and granted pattas as a measure of providing public assistance to the weaker sections of the society. The proposition is that as a general rule the State may grant privilege upon such conditions as it sees fit to impose; but the power of the State in that regard is not unlimited, and one of the limitations that it may not impose conditions which require the relinquishment of constitutional rights. That whenever State is required to make laws, regulations or policies, it must do so consistently with the directive principles with a view to securing social and economic freedom so essential for establishment of an egalitarian society. The Directive Principles of State Policy reflect the hopes and aspirations of people of this great country. The fact that they are not enforceable by any Court in no manner reduces their importance. They are nevertheless fundamental in the governance of the country and the State is under obligation to apply them in*

making laws and framing its policies particularly concerning the weaker sections of the society.

84. Dr. Ambedkar characterised the Directive Principles of State Policy enshrined in Part IV of the Constitution of India as "Instruments of Instructions". He said "whoever captures power will not be free to do what he likes with it. In exercise of it, he will have to respect these "Instruments of instructions", which are called Directive Principles. He cannot ignore them."

85. The Directive Principles fix the socio-economic goals, which the State must strive to attain. By incorporating unconstitutional clause of 'no compensation' the State kept the democles sword suspended over the head of the assignee forever. The State cannot act as a private giver.

86. In Ahmedabad St. Xavier's College Society v. State of Gujarat, 1974 (1) SCC 717, Mathew, J., expounded the doctrine of 'unconstitutional condition':

"The doctrine of "unconstitutional condition" means any stipulation imposed upon the grant of a governmental privilege which in effect requires the recipient of the privilege to relinquish some constitutional right. This doctrine takes for granted that 'the petitioner has no right to be a policeman' but it emphasizes the right he is conceded to possess by reason of an explicit provision of the Constitution, namely, his right "to talk politics". The major requirement of the doctrine is that the person complaining of the condition must demonstrate that it is unreasonable in the special sense that it takes away or abridges the exercise of a right protected by an explicit provision of the Constitution."

87. After referring to the decision in Frost and Frost Trucking Co. v. Railroad Comm., of the Supreme Court of United States (271 US 583), the learned Judge observed:

" ……..though the State may have privileges within its control which it may withhold, it cannot use a grant of those privileges to secure a valid consent to acts which, if imposed upon the grantee in invitum would be beyond its constitutional power."

88. In Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp.(1) SCC 596, the Supreme Court observed:

> *"Those without land suffer not only from an economic disadvantage, but also a concomitant social disadvantage. In the very nature of things, it is not possible to provide land*

to all landless persons but that cannot furnish an alibi for not undertaking at all a programme for the redistribution of agricultural land. Agrarian reforms therefore require, inter alia, the reduction of the larger holdings and distribution of the excess land according to social and economic considerations. We embarked upon a constitutional era holding forth the promise that we will secure to all citizens justice, social economic and political, equality of status and of opportunity; and, last but not the least, dignity of the individual ……. Indeed, if there is one place in an agriculture dominated society like ours where citizens can hope to have equal justice, it is on the strip of land which they till and love, the land which assures to them dignity of their person by providing to them a near decent means of livelihood."

It is further held:

"Property, therefore, accords status. Due to its lack man suffers from economic disadvantages and disabilities to gain social and economic inequality leading to his servitude. Providing facilities and opportunities to hold property furthers the basic structure of egalitarian social order guaranteeing economic and social equality. In other words, it removes disabilities and inequalities, accords status, social and economic and dignity of person ……. Property in a comprehensive term is an essential guarantee to lead full life with human dignity, for, in order that a man may be able to develop himself in a human fashion with full blossom, he needs a certain freedom and a certain security. The economic and social justice, equality of status and dignity of person are assured to him only through property."

(Emphasis is supplied)

89. The purpose of assignment of land either under the Board Standing Orders or under the land reforms legislations to the weaker sections of the society by the State is obviously in pursuance of its policy to empower the weaker sections of the society. Having assigned the land, the State cannot deprive him of the welfare benefit or public assistance. Deprivation of assignee's right to enjoy the property assigned to him may affect his dignity and security. It may adversely affect the equality of status and dignity.

90. It is said that the institution called property guards the troubled boundary between individual man and the State. Even if

the assignment granted is considered to be government largess it should not be able to impose any condition on largess that would be invalid if imposed on something other than a "gratuity". The most clearly defined problem posed by government largess is the way it can be used to apply pressure against the exercise of constitutional rights. A first principle should be that government must have no power to "buy up" rights guaranteed by the Constitution. The forms of largess, which are closely linked to status, must be deemed to be held as of right. These interests should be "vested". If revocation is necessary, not by reason of the fault of the individual holder, but by reason of overriding demands of public policy, perhaps payment of just compensation would be appropriate. The individual should not bear the entire loss for a remedy primarily intended to benefit the community. The benefits granted are based upon a recognition that misfortune and deprivation are often caused by forces far beyond the control of the individual, such as technological change, variations in demand for goods, depressions, or wars. The aim of these benefits is to preserve the self-sufficiency of the individual, to rehabilitate him where necessary, and to allow him to be a valuable member of a family and a community; in theory they represent part of the individual's rightful share in the commonwealth. Only by making such benefits into rights can the welfare State achieve its goal of providing a secured minimum basis for individual well-being and dignity in a society where each man cannot be wholly the master of his own destiny.

91. There is an interesting article in Harvard Law Review — Volume 73 — Page 1595:

"Conditioning the extension of a governmental benefit or "privilege" upon the surrender of constitutional rights has long appealed to Congress and the State Legislatures as a means of regulating private conduct. This appeal is principally attributable to the superficially compelling logic of the arguments upon which the validity of such conditions is supposed to rest. It is contended that if the government may withhold the benefit in the first instance, without giving a reason, it may withhold or revoke the benefit even though its reason for doing so may be the individual's refusal to surrender his constitutional rights. This argument is often phrased in syllogistic terms; if the Legislature may withhold a particular benefit, it may grant it in a limited form since the greater power of withholding absolutely must necessarily include the lesser power of granting with restrictions. As a corollary to this argument, the contention is made that the recipient of the

benefit is not deprived of a right since he may retain it simply by rejecting the proffered benefit.

Were this logic accepted in all cases, dangerous consequences would follow. The rapid rise in the number of government regulatory and welfare programs, coupled with the multiplication of government contracts resulting from expanded budgets, has greatly increased the total benefits extended, thus affording the government countless new opportunities to bargain for the surrender of constitutional rights. The potential erosion of fundamental liberties through the use of this bargaining technique has prompted the development of the doctrine of "unconstitutional conditions".

Since the government is under no obligation to grant a benefit, failure to grant may appear to be a positive power to withhold. The arbitrary character of this apparent power seems to justify the withholding or revocation of benefits where the individual fails to comply with conditions requiring the surrender of constitutional rights. But withholding is really a non-exercise of power, and the absence of a requirement that there be constitutional justification for inaction offers no logical support for the positive assertion of an authority to extend benefits and impose conditions which limit the rights of the recipient. In the latter case, the State is asserting its spending power which is limited by the due process clause of the fourteenth amendment. The cases limiting State spending power draw a dichotomy between spending for public and for private uses; however, they seem to imply a broader limitation, namely that the fourteenth amendment limits spending to purposes related to the general welfare. Despite the wide discretion this term suggests, it is at least arguable that State spending power cannot be exercised to " buy up" rights guaranteed by the Constitution. Since federal spending power is explicitly restricted to general welfare purposes, this limitation is even more likely to apply to the national government. Its application to either governmental entity would require the invalidation of conditions unrelated to the achievement of the benefit's objective since in such cases the spending power is being exercised to encourage, through subsidies the non-assertion of constitutional rights, as well as to finance a "welfare" program. Although the individual deprived of the benefit does not have standing to assert this misuse of the spending power in his capacity as taxpayer, he should have it as a beneficiary, since in that capacity he has suffered as immediate

and measurable injury; it is evident that, but for the assertion of the right, he would have received the benefit."

92. 'No compensation' clause which virtually enables the State to withdraw the privilege granted without payment of just compensation is an "unconstitutional condition" imposed by the State adversely affects the life, liberty, equality and dignity guaranteed by the Constitution. The assignment of lands to the exploited and vulnerable sections of the society is neither a formality nor a gratis. The privilege granted is with a view to ensure and protect the rights of the exploited sections of the people to live with human dignity free from exploitation. The privilege or largesse once granted acquires the status of vested interest. The policy to assign the government land by the State was obviously designed to protect the socio-economic status of a vulnerable citizenry; its deprivation would be universally perceived as a misfortune."

(Emphasis supplied)

122. The Full Bench thereafter proceeded to examine the matter keeping in mind the right to life. It proceeded to observe as under:

"93. Section 2(d) of the Protection of Human Rights Act, 1993 (Act 10 of 1994) defines "human rights" that the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.

94. Article 21 of the Constitution of India guarantees right to life. The right to life includes the right to livelihood.

95. Time and again the Courts in India held that Article 21 is one of the great silences of the Constitution. The right to livelihood cannot be subjected to individual fancies of the persons in authority. The sweep of the right to life conferred by Art. 21 is wide and far reaching. An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

96. Chandrachud, C.J., in Olga Tellis v. Bombay Municipal Corporation, 1985 (3) SCC 545, observed:

"If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21." (Emphasis is supplied).

97. The right to live with human dignity, free from exploitation is enshrined in Art. 21 and derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include the right to live with human dignity, the right to take any action which will deprive a person of enjoyment of basic right to live with dignity as an integral part of the constitutional right guaranteed under Article 21 of the Constitution of India.

98. In Delhi Transport Corporation v. D.T.C. Mazdoor Congress, AIR 1991 SC 101, the Supreme Court while reiterating the principle observed that the right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority ..... Income is the foundation of many fundamental rights ..... Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

99. The function of human rights is to protect the individual from the leviathan of the State. A welfare State provides a wide range of benefits to the citizens as of right, but at the same time it enhances the power of administration, since the benefits provided are inevitably administered by government departments or their agents. A welfare State will continue to grow leading to a more just distribution of the resources resulting in greater governmental regulation. These developments may add further dimension to the relationship between the individuals and the State. There will be more and more assertions claiming entitlements to basic social benefits from the State in addition to civil and political rights.

100. The deprivation of the assignee's right to payment of just compensation equivalent to the market value of the assigned land may amount to deprivation of right to livelihood. The denial of

constitutional claim to receive just compensation after depriving the assignee of his land is impermissible except pursuant to a constitutionally valid rule or law.

101. The contention is that if the Government may withhold the benefit in the first instance itself without giving a reason, it may withhold or revoke the benefit even though its reason for doing so may be the individual's refusal to surrender his constitutional rights. This argument is often phrased in syllogistic terms: if the State may withhold a particular benefit, it may grant it in a limited form since the greater power of withholding absolutely must necessarily include the lesser power of granting with

restrictions. The contention often advanced is that the recipient of the benefit is not deprived of a right since he may retain all his rights simply by rejecting the proffered benefit. This contention is fraught with dangerous consequences. The number of 'social choices' programmes resulting from expanded social welfare activities, has greatly increased the total benefits extended, thus affording the government countless new opportunities to bargain for the surrender of constitutional rights. The potential erosion of fundamental liberties through the use of this bargaining technique has prompted the development of the doctrine of "unconstitutional conditions". Reasonable conditions may be imposed in order to see that the interest in ensuring that the benefit or facility extended to the individual is maintained for the purposes intended, in order to protect the effectiveness of the benefit itself.

102. The recipients of public assistance are not estopped from setting up their fundamental rights as a defence as against "no compensation clause". It is very well settled and needs no restatement at our hands that there can be no estoppel against the Constitution.

103. In Olga Tellis (18 supra), the Supreme Court observed:.

"The Constitution is not only the paramount law of the land but it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. For example, the concession made by a person that he does not

possess and would not exercise his right to free speech and expression or the right to move freely throughout the territory of India cannot deprive him of those constitutional rights, any more than a concession that a person has no right of personal liberty can justify his detention contrary to the terms of Article 22 of the Constitution. Fundamental rights are undoubtedly conferred by the Constitution upon individuals which have to be asserted and enforced by them, if those rights are violated. But, the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. The Preamble of the Constitution says that India is a democratic Republic. It is in order to fulfil the promise of the Preamble that fundamental rights are conferred by the Constitution, some on citizens like those guaranteed by Articles 15, 16, 19, 21 and 29 and, some on citizens and non-citizens alike, like those guaranteed by Articles, 14, 21, 22 and 25 of the Constitution. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced would defeat the purpose of the Constitution. Were the argument of estoppel valid, and all-powerful State could easily tempt an individual to forego his precious personal freedom on promise of transitory, immediate benefits."

104. Therefore, notwithstanding the fact that the recipients had accepted the assignment subject to 'no compensation clause' and that they will not object to the resumption of the assigned lands for a public purpose, they are entitled to assert that any such action on the part of the authorities will be in violation of their guaranteed fundamental rights. How far the argument regarding the existence and scope of the right claimed by the recipients is well-founded is another matter. But, the argument has to be examined despite the concession.

105. In the matter of distribution of material resources of the community to the vulnerable sections of the society by the State in furtherance of its constitutional obligations no argument can be heard from the State contending that the recipient of the benefit may either accept with the restrictions or not to accept the benefit at all. The whole idea of distributive justice is to empower the weaker sections of the society and to provide them their share of cake in the material resources of the community of which they

were deprived from times immemorial for no fault of theirs. Having resolved to extend the benefits as a welfare measure, no unconstitutional condition can be imposed depriving the recipients of the benefits of their legitimate right to get compensation in case of taking over of the benefit even for a valid public purpose. The recipients cannot be at the mercy of the State forever.

106. Justice K.K. Mathew, in his Democracy, Equality and Freedom has observed that property is a legal institution the essence of which is the creation and protection of certain private rights in wealth of any kind. The learned Judge stated:

> *"In a society with a mixed economy, who can be sure that freedom in relation to property might not be regarded as an aspect of individual freedom? People without property have a tendency to become slaves. They become the property of others as they have no property themselves. They will come to say: 'Make us slaves, but feed us.' Liberty, independence, self-respect, have their roots in property. To denigrate the institution of property is to shut one's eyes to the stark reality evidenced by the innate instinct and the steady object of pursuit of the vast majority of people. Protection of property interest may quite fairly be deemed in appropriate circumstances an aspect of freedom. There is no surer way to give men the courage to be free than to insure them a competence upon which they can rely. This is why the Constitution-makers wanted that the ownership of the material resources of the community should be so distributed as to subserve the common good. People become a society based upon relationship and status."*

107. In Murlidhar Dayandeo Keskar v. Vishwanath Pandu Barde, 1995 Supp. (2) SCC 549, the Supreme Court observed:

> *"Economic empowerment to the poor, Dalits and Tribes, is an integral constitutional scheme of socio-economic democracy and a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, Dalits and Tribes. The State has evolved, by its legislative and executive action, the policy to allot lands to the Dalits and Tribes and other weaker sections for their economic empowerment. The Government evolved two-pronged economic policies to render economic justice to the poor. The Planning*

Commission evolved policies like DRDL for economic empowerment of the weaker sections of the society; the Dalits and Tribes in particular. There should be short-term policy for immediate sustenance and long-term policy for stable and permanent economic empowerment. All the State Governments also evolved assignment of its lands or the lands acquired under the ceiling laws to them. Appropriate legislative enactments are brought on statute books to prevent alienation of the assigned lands or the property had under the planned schemes, and imposed prohibition thereunder of alienation, declaring any conveyance in contravention thereof as void or illegal and inoperative not to bind the State or the assignee. In case the assignee was disqualified or not available, on resumption of such land, the authorities are enjoined to resume the property and assign to an heir or others eligible among the Dalits and Tribes or weaker sections in terms of the policy. The prohibition is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble to the Constitution. Even in respect of private sales of the lands belonging to tribes, statutes prohibit alienation without prior sanction of the Competent Authority."

108. Be it noted, the land by way of assignment is let for purposes of agriculture or for purposes ancillary thereto, for personal occupation and cultivation by the agricultural labourers and others belonging to weaker sections of the society. It may be lawful for the State to acquire any portion of such land as is within the ceiling limit but not without providing for compensation at a rate which shall not be less than the market value thereof. The acquisition of such land even for a public purpose without payment of compensation shall be in the teeth of Article 31 -A of the Constitution of India.

109. The masses have suffered socio-economic injustice too long and been separated by the poverty curtain too strong that if peaceful transformation of the nation into an egalitarian society were not achieved, chaos, upsurge may destroy the peaceful progress and orderly development of the society.

110. In the result, we hold that 'no compensation' clause, restricting the right of the assignees to claim full compensation in respect of the land resumed equivalent to the market value of the land, is unconstitutional. The 'no compensation clause' infringes the fundamental rights guaranteed by Articles 14 and 31-A of the

Constitution. We are conscious that Article 21 essentially deals with personal liberty. But in cases where deprivation of property would lead to deprivation of life or liberty or livelihood, Article 21 springs into action and any such deprivation without just payment of compensation amounts to infringement of the right guaranteed thereunder. The doctrine of 'unconstitutional conditions' applies in all its force.

111. In the circumstances, we hold that the assignees of the government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits on par with full owners of the land even in cases where the assigned lands are taken possession of by the State in accordance with the terms of grant or patta, though such resumption is for a public purpose. We further hold that even in cases where the State does not invoke the covenant of the grant or patta to resume the land for such public purpose and resorts to acquisition of the land under the provisions of the Land Acquisition Act, 1894, the assignees shall be entitled to compensation as owners of the land and for all other consequential benefits under the provisions of the Land Acquisition Act, 1894. No condition incorporated in patta/deed of assignment shall operate as a clog putting any restriction on the right of the assignee to claim full compensation as owner of the land."

(Emphasis supplied)

123. The State has admitted that Pattadar Passbook was issued to the appellants years back. They have also not disputed that the appellants were paying revenue to the government and the revenue receipts have also been exhibited in the form of documentary evidence. Even if we were to ignore the sale deed executed in 1970 for the time being and treat the appellants as mere occupants with the right to possession, cultivation and enjoyment, we still must remain cognizant of the rights specifically vested in the appellants by way of issuance of Pattadar Passbook. Thus, what was vested in the appellant with the issuance of a Pattadar Passbook was a "property" within the meaning of Article 300-A of the Constitution.

124. Article 300-A provides that no person shall be deprived of his property save by authority of law. This Article has been inserted by the Constitution (44th

Amendment) Act, 1978. Prior to this amendment, the right to property was guaranteed by Article 31. While Clause (1) of that Article has been shifted from Part III to Article 300-A, Clause (2) of that Article, which dealt with compulsory acquisition of property, has been repealed. Sub-Clause (f) of Clause (1) of Article 19, which guaranteed the right to acquire and hold property, has also been omitted by the same 44th Amendment Act, 1978. The result of these changes, in short, is that the right to hold property has ceased to be a fundamental right under the Constitution and it has been left to the Legislature to deprive a person by the authority of law.

125. Article 300-A provides that the property of a person can be deprived by authority of law. The phrase "save by authority of law" came before the Court for interpretation. This Court in the case of ***Wazir Chand v. State of H.P.***, reported in **(1954) 1 SCC 787** held that under the Constitution, the Executive cannot deprive a person of his property of any kind without specific legal authority which can be established in Court of law, however laudable the motive behind such deprivation may be. In the same decision, this Court also held that in case of dispossession of property except under the authority of law, the owner may obtain restoration of possession by a proceeding for *mandamus* against the governmental authorities. Further, this Court in ***Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh*** reported in **(1982) 1 SCC 39** held that the phrase *"by authority of law*" means by or under a law made by the competent Legislature. The same position is reiterated by this Court in the case of ***Jilubhai Nanbhai Khachar v. State of Gujarat*** reported in **1995 Supp. (1) SCC 596** wherein it has been observed that *"Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is*

not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

126. In ***Delhi Airtech Services Pvt. Ltd. and Anr. v. State of U.P. and Anr.*** reported in **(2011) 9 SCC 354**, this Court recognized the right to property as a basic human right in the following words:

> *"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property." Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists."*
>
> (Emphasis supplied)

F. CONCLUSION

127. Having regard to the nature of the land, the area of the suit land which is approximately three acres and the time spent pursuing this litigation for the past thirty years, we believe that the State should pay an amount of Rs. 70 lakhs towards compensation to the appellants.

128. We dispose of this appeal with the direction to the respondents to pay an amount of Rs. 70 lakhs to the appellants by way of compensation within a period of three months from the date of this judgment.

129. The Registry is directed to circulate one copy each of this judgment to all the High Courts across the country and one copy each to all the Chief Secretaries of the respective State Governments with more emphasis on the chapter of Section 80 CPC as discussed by this Court in the judgment.

..... J.
(J.B. Pardiwala)

..... J.
(R. Mahadevan)

New Delhi.
March 24, 2025.