

G. Satyanarayana vs The Government Of Andhra ... on 28 April, 2014

Author: C.V. Nagarjuna Reddy

Bench: C.V. Nagarjuna Reddy

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.Nos.15438 of 2013 and batch

28-4-2014

G. Satyanarayana.. Petitioner

The Government of Andhra Pradesh, Represented by its Secretary, Revenue Department, Secretariat, Hyderabad and others.. Respondents

Counsel for petitioner : Sri Prabhakar Sripada

Counsel for respondents : Government Pleader for Revenue
(Telangana Area)

<GIST:

>HEAD NOTE:

? CASES REFERRED:

1. AIR 1982 S.C. 1081
2. 2001(3) ALD 600
3. 1972(1) ALT 270
4. AIR 1976 A.P. 19
5. (1902) 1 MLJ 453
6. 2008(5) ALT 313 (DB)
7. 2011(5) ALT 420
8. 2011(3) ALD 571
9. (2000(3) ALT 295)
10. AIR 1974 S.C. 1178
11. AIR 2000 S.C. 3037 = 2000(7) SCC 611,
12. (1991) Supp. (2) SCC 228
13. AIR 1956 S.C. 305
14. (2006) 13 SCC 147

15. AIR 1926 P.C. 100
16. AIR 1961 A.P.361
17. 1996(11) SCC 257
18. 1989(3) SCC 612
19. 1993(4) SCC 349
20. 2002(5) ALT 370 (DB)
21. (1995) 3 SCC 426
22. 1999(5) ALD 309
23. 2002(1) ALT 466
24. AIR 1952 Hyderabad 75
25. ILR 72 A.P. 652
26. 1996(2) ALT 950
27. 1999(4) ALT 209-DB
28. AIR 1954 SC 575
29. AIR 1973 SC 1299
30. AIR 1979 SC 861
31. 2000(7) SCC 611
32. Civil Appeal No.4702/2004, dt. 7-1-2004
33. 9 Madras 175
34. 23 MLJ 32
35. AIR 1930 P.C. 103
36. (2010) 5 SCC 203
37. (2009(7) SCC 363)
38. (2009(3) ALT 419)
39. 2011(1) ALT 474
40. W.P.No.6061/2010, dt.2-7-2010
41. 2011(2) ALT 2
42. (2010) 5 SCC 382
43. 1984(1) APLJ 219
44. 1970(1) ALT 88

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.Nos.15438, 31582 of 2012; 23447, 23595, 23599, 23615, 25333, 25356, 25387, 25727, 25993, 26106, 27589 of 2013

Date : 28-4-2014

The Court made the following

COMMON JUDGMENT:

PART-I Introduction:

Though the facts vary from case to case, a common issue is involved in all these Writ Petitions, namely, what documents determine title and ownership to land. While some petitioners claimed their rights based on entries in revenue record, others based their claims on long standing possession as evidenced by registered sale deeds. The Government denied their title mainly based on the entries in the revenue records such as Re-Survey and Re-settlement Register (RSR) and Town Survey Land Register (TSLR). This Court, therefore, felt the necessity of dealing with these cases together by addressing this common aspect, which is faced by it day-in and day-out.

Before discussing the general law governing the subject, it is appropriate to briefly refer to the facts of each case hereunder:

Brief facts:

W.P.Nos.23595, 23599 & 23615 of 2013:

The petitioners in these Writ Petitions who claimed ownership under registered sale deeds were denied pattadar passbooks and title deeds by the Tahsildar, Bandaganipalli village, Udaigiri Mandal, Nellore District on the ground that as per the Adangals, the lands are shown as Government lands. The petitioners claimed that the RSR shows these lands as private persons. They have also relied upon separate but identical certificates issued by the Tahsildar concerned.

The respondents have not filed counter-affidavit in any of these cases.

W.P.Nos.25333 and 25356 of 2013:

The facts in both these cases are identical. The petitioners have claimed right under registered sale deeds. They were granted pattadar passbooks and title deeds for Ac.39-33 cents each in Sy.Nos.436, 438, 439 to 442 of Boodili village, Gorantla Mandal, Anantapur District. The petitioners vendor was declared as a surplus land holder to the extent of Ac.5-59 cents under the provisions of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short the 1973 Act) vide C.C.No.93/75/HUP and compensation was paid to the declarant on 10-3-

1978 for taking over the surplus land. The Tahsildar issued pattadar passbooks and title deeds to the petitioners. The land admeasuring Ac.624-00 in Chilamathur, Gorantla Mandal, Anantapur District was proposed to be alienated for establishment of BDL Project and that out of the said land, an extent of Ac.96-49 cents was found to be assigned land. In W.P.No.23223/2011 filed by the brother of the petitioners vendor, this Court has directed the Tahsildar to settle the rival claims for compensation. The Tahsildar, Gorantla Mandal has passed an order in Rc.No.208/2010/A, dated 16-10-2012 holding that in the RSR of Bodili village, the lands are recorded as Government land and that there were no entries in the village records showing that the lands were assigned to any person. While admitting that the lands are subjected to sale transactions from the year 1934 and that the entries in 10(1) Register recorded the names of private persons, it was however maintained that the incorporation of those entries was without verification by any officer.

Separate, but identical counter affidavits have been filed in W.P.Nos.25333 and 25356 of 2013 by the Revenue officials and the A.P. Industrial and Infrastructure Corporation (APIIC). In both these Writ Petitions, the petitioners claim for compensation has been denied based on the entries in the RSR showing the land as belonging to the Government.

W.P.No.31582/2012:

The mother of petitioner No.1 M. Sesharatnamma, purchased an extent of 2000 sq. yards under registered sale deed No.677/1963, dated 21-2-1963. In the year 1975, she obtained permission from the then Vijayawada Municipality and constructed an A.C. sheet shed, which is being used as a godown-cum-mosaic tiles manufacturing unit. Since the death of his mother in the year 1975, petitioner No.1 is in possession and enjoyment of the subject property. Petitioner No.2 has succeeded to an extent of 180 2/3 sq. yards under a registered will executed by one Vemuri Nancharamma who has purchased the said property under registered sale deed dated 16-5-2008. Petitioner No.3 purchased 125.27 sq. yards of land under registered sale deed dated 20-12-1979.

The petitioners pleaded that their lands form part of Ac.2-73 cents of land recorded as burial ground poramboke in the Town Survey records; that Machavaram village, in which the lands are situated, was an estate village under the possession and enjoyment of Jagirdars; that initially survey of the village was conducted in the year 1923 and since then the Jagirdars are in possession and enjoyment of Ac.2-73 cents and that sale transactions have taken place between the Jagirdars and individuals from the year 1901 onwards in respect of Ac.155-00 cents of land. The petitioners further pleaded that the lands have changed many hands during the last 110 years and that the burial ground is situated over an extent of 9111.36 sq. yards and the same is surrounded by a compound wall on all the sides and the said extent of Ac.2-73 is outside the compound wall; that as the land was classified as Burial ground poramboke in the Town Survey records, the petitioners are not able to obtain permission from respondent No.6-Corporation for construction of houses. The petitioners have approached the respondents for change of classification of the land from Burial ground poramboke to Assessed Waste Dry (AWD). The Revenue Divisional officer, Vijayawada submitted his report to the Collector, Krishna District, Machilipatnam. He has stated in his report that the land admeasuring Ac.155-00 was registered through a sale deed during the year 1901 in favour of Vahejullah Saheb s/o. Afizullah Saheb and that the same changed hands under subsequent sale deeds dated 17-11-1931 and 20-6-1940. The report has also referred to as many as 18 sale deeds, in all, in respect of smaller extents of lands forming part of Ac.155-00. Based on the facts placed by the Mandal Revenue Inspector and the Mandal Surveyor, the Revenue Divisional officer has summarised the background as under :

1. Machavaram village in Vijayawada Urban Mandal is an Estate village.
2. As verified from the copies of the Registered Documents the land in question is Government Dry and there are link documents to that effect since 1901 and it was known as Government Dry.
3. Registered sale transactions occurred several times since 1901 to 1978 and there are link documents to that effect.

4. Since 1971, the Municipal Authorities have given the assessment number and allotted Door Nos.
5. Since 1969, the Municipal Authorities have approved the building plans in the subject land in favour of the petitioners.
6. The contention of the petitioners is that the land in question is a private land but not Government land.
7. In the year 1943, the Jageer Machavaram village was merged into Vijayawada Municipality much prior to Estate Abolition Act.

He has finally summed up in his report as under :

Finally the field staff have reported that the said land inspected on ground and confirmed and said boundaries for an extent of 4000 sq. yards and also as per the documentary evidences the land in question is merged in burial ground in detail Town Survey instead of patta land in the year 1964 and further submitted that the petitioners are resided in the said land since several decades. Hence there is no objection for Re- classification of land measuring 4000 sq. yds. In NTS No.45, Block No.21, Revenue Ward 16, of Machavaram village from Burial Ground to patta land.

The Tahsildar, Vijayawada Urban has reported that the circumstances explained above and as per the documentary evidences filed by the petitioners the land in question is earmarked in Town Survey Records as Burial Ground but the land in question is merged in burial ground in detail Town Survey instead of patta land in the year 1964.

On the report of the Tahsildar, Vijayawada, Urban, I have inspected the land in question along with Tahsildar, Vijayawada Urban, Mandal Surveyor, Vijayawada Urban on 2.4.2010 and I agree with the report of the Tahsildar, Vijayawada Urban.

The District Collector, in his report dated 21-2-2011 sent to the Chief Commissioner of Land Administration (CCLA) requested for permission to change the classification of the land admeasuring 4000 sq. yards in N.T.S. No.45, Block 21, Revenue Ward No.16 of Machavaram village from Burial ground to AWD. The CCLA appeared to have addressed the Collector, Krishna District to re-verify the facts and submit a fresh report. The Collector, in his fresh report dated 3-9-2011 opined that no records are available to indicate that the land is a private land and the same was wrongly classified as Burial ground. The CCLA in turn has submitted his report in CCLAs Lr.No.B2/375/2011, dated 18-10-2011 wherein he has referred to the entry in the Fair Adangal prepared in the year 1968 describing the land as Smasanam. He has further stated that the Assistant Director, Survey and Land Records reported that the Settlement Records under the Estates/Inam Abolition Act are not available for

examination; that the petitioners have produced only the sale transactions from the year 1901 as evidence that the schedule land is a private land; that the sale transactions alone cannot be taken as evidence to prove that the schedule land is a private land and that the petitioners have not produced any other relevant evidence, such as, Ryotwari Patta in support of their claim.

Based on the above mentioned reports, respondent No.1 has rejected the petitioners claim for conversion of the land from Burial Ground to patta land.

The Collector, Krishna District, filed a counter affidavit wherein he has inter alia averred that mere occupation of the land classified as Burial Ground and sale of the same through registered sale deeds will not confer title on the claimants; that no Ryotwari Patta has been obtained by the petitioners under the Estates Abolition Act; that the petitioners failed to approach the authorities concerned during Survey and Settlement operations taken place in the year 1964-65 seeking proper classification; and that the Settlement process was completed and Town Survey Register was prepared in the year 1968. It is further averred that as seen from the Fair Adangal of Machavaram village prepared in the year 1968, the ground rent was not fixed as per Section 18(4)(i) of the Estates Abolition Act and that the land was noted as Smasanam.

W.P.Nos.25727/2013 & 26106/2013 The petitioner in W.P.No.25727/2013 claimed that the land admeasuring 800 sq. mts. is a part of Matraka property; that a compromise decree was passed in O.S.No.1420/1983 in the Court of the learned II Additional Judge, City Civil Court, Hyderabad, as per which the petitioner and his wife were allotted 1000 sq. yards each, comprised in house bearing No.23-1-433/7 and 23-1-433/8, Talab Katta, Bahadurpura Mandal, Hyderabad; that the petitioners wife died on 26-7-2010 and that after her death, the petitioner is in possession of the said property. The petitioner in W.P.No.26106/2013 claimed that he was allotted a portion of 479 sq. yards, comprised in house bearing No.23-1-433/9, Talab Katta, Bahadurpura Mandal, Hyderabad, in the above mentioned compromise decree and that he is the absolute owner and possessor of the same. On 13-6-2013 and 30-8-2013, notices under Section 7 of the A.P. Land Encroachment Act, 1905 (for short the 1905 Act) were issued alleging that the land in T.S.No.89, Block-M, Ward No.212 is recorded as G-Abadi in the Town Survey record and that therefore the petitioners are encroachers over an extent of 450 and 130 sq. mts. respectively. The petitioners submitted their explanations stating that the entries in the TSLR are not conclusive proof of title.

Rejecting the said explanations, eviction orders under Section 6 of the 1905 Act has been passed by the Tahsildar on 30-8-2013. Assailing the said orders, the petitioners filed these Writ Petitions.

In the counter affidavit filed by the respondent-Tahsildar, Bahadurpura Mandal, Hyderabad District, it is inter alia stated that the land admeasuring 6630 sq. mts. in T.S.No.89/M, Ward No.212

is recorded as G-Abadi (Government land); that once the Town Survey was conducted, the same becomes final and that a Gazette notification as required under Section 13 of the A.P. Survey and Boundaries Act, 1923 (for short the 1923 Act) was published vide notification No.36, dated 12-7-1977; that as the petitioners failed to file suits challenging the same, the entries in the TSLR have become final; that the entries in the Town Survey records will prevail over any other document and the same are conclusive proof of title as they have become final and remained unchallenged as provided under Section 14 of the 1923 Act. W.P.No.27589/2013:

The dispute pertains to 925 sq. yards of property comprised in H.No.17-2-258 and 17-2-258/2 of Kurmaguda, Madannapet, Hyderabad. The petitioners traced their title to the said land as under:

One Shahazadi Bi w/o. Gulam Dastagir, sold the property to P. Mallesh through registered sale deed dated 17-6-1959. One B. Krishna purchased the said property from P. Mallesh. Under registered sale deed dated 15-4-1966, the said B. Krishna sold the property to Satyamma w/o. Eswar Chandra. Satyamma and her husband filed O.S.No.555/1985 on the file of the learned V Additional Judge, City Civil Court, Hyderabad, for declaration of title and the said suit was decreed in their favour on 26-9-1995. After the death of Satyamma's husband, her family members executed agreement of sale-cum-G.P.A. in favour of B. Vasanth Rao under registered document No.3674/2005. The family members of B. Vasanth Rao executed registered sale deed dated 8-3-2006 in favour of P. Om Prakash through registered document No.1165/2006. The said P. Om Prakash sold the property to the petitioners under registered document No.4610/2006.

Respondent No.1-Tahsildar, Sayeedabad Mandal, Hyderabad, issued a impugned notice under Section 7 of the 1905 Act wherein it was alleged that the subject land in T.S.No.40, Block-K, Ward No.175 is recorded as G-Abadi in the TSLR; that the petitioners have encroached an extent of 773 sq. mts. with structures raised in about 50 sq. yards with a compound wall. In their reply, the petitioners have pleaded that the entries in the TSLR do not have any evidentiary value and that the summary eviction proceedings cannot be initiated in view of the law laid down by the Apex Court in Government of Andhra Pradesh Vs. Tummala Krishna Rao . However, respondent No.1 vide his order dated 19-9-2013 ordered eviction of the petitioners under Section 6 of the 1905 Act. Respondent No.1 initiated the impugned proceedings for eviction of the petitioners under the 1905 Act. Questioning these proceedings, the petitioners filed this Writ Petition.

The petitioners have pleaded that no notice was issued to them under Sections 5 and 6 of the 1923 Act. They have also relied upon the Judgment of this Court in Hyderabad Potteries Pvt. Ltd. Vs. Collector, Hyderabad District and another in support of their plea that the entries in the TSLR do not have any presumptive value to hold that the subject land belongs to the Government.

Respondent No.1 filed a counter affidavit wherein it was inter alia averred that during 1964-70, Town Survey was conducted in the twin cities of Hyderabad and Secunderabad duly following the procedure laid down under the 1923 Act; that general notifications under Section 5 and 6 thereof were published in the Gazette informing the public that the Town Survey operations have commenced in the twin cities; that as required under Section 9(2), individual notices were given to the registered holders of the properties for raising objections, if any, with regard to fixation of boundaries; that a final notification under Section 13 was published in the Hyderabad Gazette; that in respect of the subject land, notification was published in Gazette No.22, dated 18-4-1977, under which boundaries were determined and recorded and that the same have become final and conclusive proof that they are deemed to be correct as no person has filed a suit within three years from the date of the notification. It is further averred that the subject land forms part of the village site of Saidabad village, which was not surveyed in the Revenue Survey (Cadastral survey); that during the Town Survey, the village sites were also surveyed taking into account the physical enjoyment of the land and the names of the occupants of the village sites were shown as present enjoyers in column No.20 of the TSLR and in column No.10, the land is mentioned as village site/Abadi. It is further averred that with regard to the unclaimed vacant land in the village site, the Town Survey authorities have obtained clarification from the Government vide G.O.Ms.No.1039, dated 13-9-1972, as per which the unclaimed vacant lands in the village site area are recorded as Government Abadi. It is thus pleaded that as per the TSLR entries, the Government of Andhra Pradesh is the absolute owner and possessor of the property, and that no one, except the Government, has any right, title or interest over it.

In the reply affidavit, the petitioners, while reiterating their plea that the TSLR entries cannot constitute conclusive proof of title, pointed out the contradiction in the stand taken by the respondents. Along with the reply affidavit, they have filed a copy of the proceedings in E/3412/2012, dated 12-9-2012 of respondent No.1 whereunder he has rejected the petitioners application for grant of No Objection Certificate (NOC). A copy of the Check Memo enclosed to the said proceeding giving reasons for rejection is also filed. At column No.8 of the Check Memo, it was mentioned As per the file No.J/B7/84 to the sketch by DIS of this office 375 sq. mts. is covered in surplus land out of 639.65 sq.mts. From this, the petitioners averred that if the subject land belongs to the Government, the same would not have been the subject matter of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the 1976 Act").

W.P.No.15438/2012: The petitioner claimed title to 2300.46 sq. yards of land situated at premises bearing municipal No.1-7-496/1 of Zamistanpur village, Musheerabad, Hyderabad under three registered sale deeds dated 5-6-1985, 14-6-1985 and 15-11-1985. Proceedings under the 1976 Act were initiated in respect of the said property. The Primary Authority, by its order dated 30-8-1995 in C.C.No.7576/1975 declared 270 sq. mts. as surplus land. However, the Appellate Authority, by order No.H1/7576/76, dated 20-6-1996, declared the petitioner as a non-surplus holder. The petitioner sold 1124 sq. yards out of the subject property to a third party under a registered sale deed. When the petitioner was intending to sell the remaining 1176.46 sq. yards, he was informed by the

Sub-Registrar, Chikkadpally that the District Collector, Hyderabad vide his letter No.C3/5042/2007, dated 4-7-2011, instructed the registering authorities not to register any document on the ground that the subject property is included in the prohibitory list prepared under Section 22-A of the Registration Act, 1908 (for short "the 1908 Act"). The petitioner averred that even before he has purchased the said property in the year 1985, he was in possession of the land as a tenant and running a plastic industry in the name and style of M/s. Himayala Plastic Industry by obtaining licence. The petitioners application dated 8-2-2012 for deletion of the land from the prohibitory list was rejected by the District Collectors endorsement dated 7-5-2012 on the ground that as per the TSLR, column No.10 is kept blank and column No.20 is recorded as G-Abadi. The petitioner has filed a copy of the Mutation Register of the year 1980 issued by the Tahsildar, Musheerabag Taluq under which the property has been mutated in the names of as many as 10 private persons including Shah Mohd. Khan and Smt. Chunnu Begum.

The Tahsildar, Musheerabad Mandal, filed a counter affidavit wherein it is inter alia averred that the subject property has been identified on ground as falling in T.S.No.56, Block-A, Ward No.153 correlated to Sy.No.181/P of Zamisthanpur village, Musheerabad Mandal, Hyderabad District, which is vacant on ground; that as per the Town Survey records, the property is recorded in column No.10 as Blank and in column No.20, it was recorded as G. Abadi. From this, the Tahsildar has concluded that the subject property belongs to the Government. It is further stated that the petitioner has made an application seeking deletion of the subject property from the prohibitory list and that as the property was recorded as G. Abadi in the TSLR, an endorsement was issued by the District Collector on 7-5-2012 rejecting the said request. An averment similar to that made in W.P.No.27589/2013 has been made with regard to the conduct of Town Survey under the 1923 Act, to buttress the plea that in view of the failure of the petitioner to question the entry by filing a civil suit within three years under Section 14 of the said Act, the same have become final and title of the Government to the subject property stands confirmed. W.P.No.23447/2013: An extent of 271 sq. yards of vacant site, situated in Sy.No.211 of Banoo colony, Domalguda, Himayathnagar Mandal, Hyderabad, is the subject matter of this Writ Petition. One Dr. Fareed s/o. J.D. Italia, has purchased the subject property from Mrs. Pramila Mody w/o. Dr. C.L. Mody under registered sale deed dated 14-8-1956. The petitioners mother purchased the property from the said Dr. Fareed under registered sale deed dated 10-12-1984. The application filed by the petitioners mother for issue of NOC in connection with approval of building plan by the Municipal Corporation of Hyderabad was rejected by the Joint Collector, Hyderabad, vide proceedings dated 31-8-2005 on the ground that the land was shown as GVM Drain in the TSLR. After the death of her mother, the petitioner made an application to the District Collector on 15-10-2012 seeking conversion of the land from GVM Drain to patta. The District Collector, Hyderabad, vide his endorsement No.E2/2539/2013, dated 24-6-2013, rejected the said request by stating that the petitioner has purchased the subject property after preparation and implementation of the TSLR. The petitioner pleaded that her title to the subject property cannot be determined merely on the basis of the entry in the TSLR.

In the counter affidavit, the respondents asserted that the land is shown as GVM Drain in the TSLR. It is further averred that the subject land was under the management of the Municipality and it was being utilised for drainage and as such the classification of the land was mentioned as GVM in the TSLR. In short, the plea of the respondents is that similar to that in W.P.No.27589/2013 and

W.P.No.15438/2012. W.P.No.25387/2013: The petitioner claims ownership over Ac.1-43 cents in Sy.No.931 and Ac.1-32 cents in Sy.No.932 of Goran Cheruvu village, Gaaliveedu Mandal, Kadapa District. He has averred that registered sale transactions exist with regard to the subject lands from the year 1950. He has referred to registered sale deed dated 5-7-1963, under which his vendor Karimi Reddy Chandra Reddy has purchased the land from Karimi Reddy Mal Reddy. Under registered sale deed dated 6-12-1995, the petitioner purchased the land from the said Karimi Reddy Chandra Reddy.

Respondent No.3-Tahsildar, Gaaliveedu Mandal, issued notice in Form-1 on 2-9-2011 alleging that the petitioner has purchased the subject lands in contravention of the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "the 1977 Act"). Questioning the said notice, the petitioner filed W.P.No.26061/2011. The said Writ Petition was disposed of by this Court by order dated 22-8-2012, leaving the petitioner free to submit his explanation and directing the respondents to consider the explanation and pass an appropriate order. On 4-9-2012, to the petitioner submitted his explanation wherein he has referred to the sale transactions from the year 1950 and denied that the lands belong to the Government or that the same were assigned. In the impugned proceedings Roc No.B/168/2011, dated 8-8-2013, the respondent No.3-Tahsildar agreed with the plea of the petitioner that the records do not show that the lands were assigned to any one and he has accordingly dropped further action under the provisions of the 1977 Act. Respondent No.3 has referred to the historical background relating to the title over the lands under different regimes. Respondent No.3 opined that the RSR has become the basic record by which one can know the status of each and every piece of land; that if any land belongs to a private person, an entry in that regard will be made in the RSR and that if the RSR contains dots, such lands will automatically become the Government lands. He has further observed that the land admeasuring Ac.1-43 cents in Sy.No.931 is classified as Government Waste (Gayalu) in the RSR and that as no settlement patta or assignment patta was granted in respect of the said land, the private sale transactions taken place from the year 1950 do not bind the Government. Referring to the pattadar passbooks and title deeds, respondent No.3 remarked that they might have been issued under a mistaken impression that the lands are private patta lands and that the petitioner would not get any right over the Government lands. As regards the land admeasuring Ac.1-23 cents in Sy.No.932, respondent No.3 stated that the RSR contains dots and that as the petitioner or his predecessors have not obtained any settlement patta, the said land is deemed to be Government land. Questioning these proceedings, the petitioners filed this Writ Petition.

The counter affidavit filed by the respondent is also in the same vein. Therefore, no specific reference to its contents need be made. W.P.No.25993/2013: The dispute in this Writ Petition pertains to Ac.0-50 cents in Sy.No.1008/1/A2 and Ac.2-50 cents in Sy.No.1008/1/A3 (patta No.219) of Jagadevipeta village, Indukurpet Mandal, Nellore District. The petitioners application for conversion of the lands from agricultural to non-agricultural was kept pending on the ground that instructions from the Government are awaited. The petitioners pleaded that the subject lands are private lands. It has traced the transactions from 5-12-1930 when a mortgage deed was executed by one Kande Guravaiah in favour of Ponnalur Venkata Narayana Reddy in respect of Ac.1-59 cents in Sy.No.1008/2/A. The petitioner have referred to registered sale deeds dated 19-9-1945, 17-4-1955, 15-7-1968, 17-11-1971, 23-2-1999, 23-3-1999, 23-3-1999, 15-7-2008, 9-9-2009 and 3-3-2010 under

which the subject properties have changed hands from persons to persons.

Though no counter affidavit is filed, the stand of the respondents is reflected from the two proceedings dated 23-2-2013 and 20-6-2013 of the respondent No.3-Revenue Divisional officer, Nellore, wherein she has informed that in the first mentioned proceedings, respondent No.3 has informed the petitioner that the land is recorded as . (Anadeenam Punja) as per the village Diglot and that as per the directions of the District Collector, Nellore, in case of Anaadeenam Punja lands, further instructions from the Government shall be awaited. The said stand was reiterated in the latter proceedings dated 20-6-2013 of respondent No.3.

PART-II From the respective pleadings and the stands taken by them, the following Points emerge for consideration :

1. (a) What documents constitute title for lands?

(b) Whether the entries in the revenue records constitute conclusive proof of title and if not whether they have evidentiary value in determination of title?

2. Whether multiple registered sale transactions reflecting long standing possession give rise to a presumption of title to the property?

3. Whether the entries in Resurvey and Resettlement Register (RSR) and Town Survey Land Register (TSLR) are conclusive in determining title?

4. Whether eviction proceedings under the 1905 Act can be initiated when there is a bonafide title dispute.

I have heard the learned Counsel for the petitioners, the learned Government Pleader for Revenue (Andhra Area), the learned Government Pleader for Revenue (Telangana Area) and perused the record. Some of the learned Counsel for the petitioners and both the learned Government Pleaders have presented their written submissions, besides filing material pertaining to land tenures. Re Point No.1: The Courts are quite often faced with the problem of resolving the disputes between two private parties or between private parties on one side and the State on the other side on the question of ownership over lands. The competing claims by these adversary parties are based on the entries in the various records which are mostly Survey and Settlement records and revenue records. No statutory enactment has, with precision, indicated as to what constitutes title with reference to the land records. Unless a proper insight into the history and evolution of the land systems is acquired, resolution of title disputes continues to pose difficulties for the Courts. It is in this context that this Court feels the necessity of tracing the history of land tenures. Evolution of ryotwari system in British India:

Two seminal works, one by B.H. Baden Powell, a member of Bengal Civil Service and one of the former Judges of the Chief Court of Punjab and another by S. Sundara Raja Iyengar, extensively dealt with the land systems prevailed prior to the advent of the

East India Company and the introduction of ryotwari system by the British. These two books Land Systems of British India by B.H. Baden Powell and Land Tenures in Madras Presidency by S. Sundara Raja Iyengar, along with another fabulous piece of work titled Land Law in Madras Presidency by B.R. Chakravarthi, published by P. Rama Iyer & Co. (1927) throw great light on the subject. The book titled The Revenue Code containing all the existing Revenue Regulations and Acts applicable to the Madras Presidency from 1802 to December 1860 by C. Annadurai Aiyar, is also of great help in knowing the background of the Ryotwari system. The valuable information contained in these books is made basis by me in dealing with the Ryotwari system in the British India.

The East India Company started acquiring the country around Madras, known as jagir in the 18th century from the Nawab of Mysore and the final acquisition of the territory which was in piece-meal was between 1750 and 1760 A.D. By 1780, the British officers took regular charge of revenue collection. At that time, the entire Chingalput District formed jagir and from out of the same, a single taluq of Madras was formed as a separate District. In the year 1765, the East India Company has acquired parts of Andhra area, then called as Northern Circars, from the Mughal Emperor . The then Madras Government has also obtained a grant in the year 1768 from the Nizam of the Deccan, who was laying a claim over the said territory. The Northern Circars were divided into five administrative divisions, namely, Chicacole (Srikakulam), Rajamahendravaram (Rajahmundry), Ellore (Eluru), Kandapili (Mustafanagar) and Murtazanagar (Guntur). They are presently Visakhapatnam, East and West Godavari, Ganjam and Guntur, respectively. After the areas came under the British administration, Provincial Councils were established to supervise collection of revenue from the ryots by the zamindars and other middlemen. The lands were divided under two categories i.e., (i) lands settled under zamindars as in Bengal and (ii) Haveli lands i.e., those reserved for the support of the Royal family and its immediate dependents (otherwise known as Crown property).

The Ceded Districts: The Southern and Western frontiers of the Mysore State, namely, Salem District (Baramahal, excluding the hill taluk of Hosur), some taluks of Madura, Dindigal (Tindukhal) and Palni, were ceded by Tipu Sultan to the British in the year 1792. Coimbatore, Kanara and Hosur taluks were ceded in 1799. The Districts of Bellari, Anantapur, Palaud taluk of Kitsna (Krishna) Kurapa (Kadapa) and Karnul (Kurnool) were transferred by the Mysore sultan to the Nizam in the year 1799. These Districts were however ceded by the Nizam to the British in 1800 A.D. `Baden Powell made a graphic description of the condition of the North-Eastern and ceded Districts regarding revenue administration when the British has taken over .

British administration of Northern Circars: When the British took over, the Northern Circars were managed by the existing zamindars wielding importance and influence and others of the ordinary type of revenue agent. The Haveli lands which belonged as private estates to the Mughal Crown or to the members of the Royal family, were

given to lessees (renters). The Haveli lands were made into parcels or mutthas and sold to the highest bidders. The mutthadars became the proprietors and permanent settlement holders.

Provincial Councils were formed in 1769 on the model of Bengal. These Councils were unsuccessful in managing and supervising the Revenue Arrangements. In the ceded Districts, lands were in the hands of local chieftains, called Poligars, who were used by the rulers as semi- independent Revenue Collectors and also as Police in aid of Revenue Collector.

Mr. B.R. Chakravarthi wrote that when the British took over the reins, three categories of persons were controlling the lands. They were : (1) Princes and Rajas; (2) Poligars and (3) Chowdaries under Hindu Rule who were also called Cories (Tax gatherers) under Muslim Rule. They were later recognised as zamindars in the Northern Districts. There were also Mattas (Muttas) and inamdars who were permitted to hold lands under their control by the Rulers. All these categories of persons used to allow ryots to cultivate and collect revenue from them as the agents of the Rulers.

Permanent settlements: About the year 1790, Lord Cornwallis attempted a ten year settlement in Bengal under instructions from the Court of Directors. Even before the expiry of decennial settlement, permanent settlement was introduced into that Presidency in 1792 under the instructions from the Court of Directors. Having found the system a success in Bengal, a suggestion was made by the Court of Directors on the advise of Lord Cornwallis to extend it to other parts of India, especially to Madras. Under the permanent settlement, zamindars and poligars and other landholders who were in-charge of estates were offered the choice of settling their pesh-kush (revenue payable to the Government) at an unalterable amount. Many availed themselves of the opportunity and got the benefit of Government demand once and for all fixed. But some looked upon this act of the Government with suspicious eye and avoided permanent settlement. A few poligars, according to Badeen Powell, attempted to resist the local authorities in the hope of continuing the same course of lawless exaction and plunder that they had adopted for a long time. Mr. Chakravarthi attributed this as a reason for some of the lands having remained unsettled. The Havelley lands not under the control of zamindars and poligars were permitted to be converted into muttas of varying sizes and sell them in public auction to the highest bidders.

Control of growth of permanent settlement: In 1803, Lord William Bentinck became the Governor of Madras and objected to the further expansion of the zamindari settlement. Administrators like Thomas Munro, the then Chief Controller of the ceded districts, constantly worked for putting a stop to the zamindari settlement and introducing individual or ryotwar settlement whereunder individual settlements or settlement with each ryot not with a view to give the government an opportunity to

review the assessment once in 30 years or in shorter intervals if need be, but with a view to give the ryots all the advantages of permanency in settlement without any of the disadvantages inevitable in the zamindari system are envisaged.

Due to the stalling of the further growth of permanent settlement, only 1/3rd of the Madras Presidency was permanently settled in favour of zamindars and other landholders.

Period of transition: Consequent on stoppage of permanent settlement, the question arose as to what was the system of settlement to be adopted with advantage as regards the lands which had not been permanently settled. Several alternative systems were tried. Prominent among them were individual settlement whereunder each individual mirasidar or ryot separately without there being any community either of interest or of responsibility between the several mirasidars or ryots of a village, was made. There were again sub-categories of this system Amani system, Appanam system, Pathukattu system, Tarambarthi system and the Dittam system.

Under Mozawar or village settlement system, the assessment is fixed on the body of cultivators as a whole in the village instead of with each cultivator. Under this system, there was joint liability on the part of the cultivators so that if one ryot failed to pay his quota, the others must make good the loss. The Olungu or Oolungu, the Bill Muktha or Muktha and Veasabudi were most common instances of Mozawar system.

Ryotwari settlement: At last all these systems were abolished and the system of ryotwari settlement invented by Colonel Read and Colonel Munro and tried by them in Salem District was adopted throughout the Presidency. Under these reforms, not only all the lands which have not come under the permanent settlement but also zamindari and mittha lands that had lapsed to Government for arrears of revenue or otherwise were settled on ryotwari tenure. Thus, these administrative measures culminated in establishing two modes of revenue administration : (1) Permanent settlement system and (2) Ryotwari system. Legal regime:

With a view to ameliorate the condition of ryots in zamindaries and permanently settled estates and regulate the relationship between the zamindars or holders of permanently settled estates and the ryots under them, several legislative measures were taken by the British India. The first of these was the Permanent Settlement Regulation 25 of 1802. This regulation provided for issue of permanent title deeds called sunnad-i- milkayat-istimarari by the Government to the zamindars and other land holders where estates had been settled and in return these zamindars and landholders should execute what are called Kabuliats in favour of the Government. This Regulation recognised the zamindars absolute power of alienation of lands under their control subject to the condition of such alienations being registered in the Collectors register. The zamindars or landholders shall within a reasonable period of time grant each ryot a patta or kaul defining the amount to be paid by him and

explaining the further conditions of engagement. The zamindars or landholders shall grant regular receipts to the ryots for discharges in money or in kind made by the ryots on account of the zamindars.

Regulation 28 of 1802 conferred power on the holders of estates to distrain for arrears of revenue. This Regulation was later repealed by the Rent Recovery Act 1865, which contained similar provisions.

Regulation 29 of 1802 created the office of Kernam (Karanam as in later years came to be popularly known as). This office of Kernam was created for the purpose of preservation of the rights and the property of the people, to facilitate the decision of suits in the courts of judicature, prevent diminution of the fixed revenue of the Government and securing individual persons from injustice by enabling the public officers of government and the courts of judicature to procure authentic information and accounts.

Regulation 30 of 1802, otherwise known as Patta Regulation, provided for grant of patta by zamindar or landholder and execution of counter-part by the ryot called muchilika. The patta should contain the description of the property, the terms of the holding such as the rent payable by the ryot and the time or duration of the tenure. Pattas and muchilikas must be registered in the office of the Kernam. Even the landholder could not make any demand except as provided for in the deed and for any illegal exaction, he would be liable in damages to the extent of three times of the amount so exacted. If the ryot demanded patta and there was refusal or delay, he could sue the landholder for damages.

Incongruities of Regulation 25 of 1802: The language of this Regulation created confusion over the mutual rights and obligations of zamindars or landholders and the ryots. The title to the Regulation read : A regulation for declaring the proprietary right of the lands to be vested in individual persons. The Preamble, inter alia, stated that the idea was to grant the zamindars and landholders their heirs and successors, permanent property in land in all the time to come. Section 2 declared that the proprietary right of the soil shall become vested in the zamindars and other proprietors of land and in their heirs and lawful successors forever.

Regulations 4 and 5 of 1822: The Board of Revenue brought to the notice of the local Government of the lacunae in the previous Regulations and in particular, Regulation 25 of 1802. Regulations 4 and

5 of 1822 were issued with a view to clarify the provisions of Regulation of 1802. Regulation 4 declared that in passing Regulation of 1802, it had no intention of authorising any infringement or limitation of any established rights for any class of its subjects whatever and consequently the Regulations should not be understood as having been meant to define, limit, infringe or destroy the actual rights of any description of landholders or tenants but merely to point out in what manner the

tenants may be proceeded against in the event of their not paying the rents justly due from them.

Regulation 5 was issued to remedy certain defects in previous Regulations.

Rent Recovery Act 1865 (8/1865) : Regulations 4 and 5 did not repeal Regulations of 1802. The ryots were so completely under the control of the landholders that they could not easily take advantage of the provisions of Regulations 4 and 5, which were intended for their benefit. Therefore Act 8 of 1865 was passed which contained similar provisions regarding exchange of pattas and muchilikas and for enhancement of rent etc. Even after these legislative measures, the main question whether the zamindars and landholders were the absolute owners of the land or whether the tenants had any rights in the soil remained unanswered and gave rise to numerous decisions, some favouring ryots and the others favouring zamindars and landholders. It is in this background that Estates Land Act 1 of 1908 was passed. Features of Estate Land Act: Section 2 of the Act defined estate as under:

Estate means :

- (a) any permanently settled estate or temporarily settled Zamindari;
- (b) any portion of such permanently settled estate or temporarily settled Zamindari which is separately registered in the office of the collector;
- (c) any unsettled Palaiyam or Jagir;
- (d) any village of which the land revenue alone has been granted

in inam to a person not owning the Kudivaram thereof, provided that the grant has been made, confirmed or recognised by the British Government, or any separated part of such village;

- (e) any portion consisting of one or more villages of any of the estates, specified above in clauses (a), (b) and (c) which is held on a permanent under tenure.

The term Land holder is defined as :

Land holder means a person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title or any order of a competent court or of any provision of law.

The Act divided the lands in an estate as ryoti lands and private lands. Ryoti lands were further divided as ryoti lands proper and old waste. Ryoti land means cultivable land in an estate other than private land, but does not include

- (a) tank beds;

(b) threshing floors, cattle stands, village-sites, and other lands situated in an estate which are set apart for the common use of the villagers;

(c) lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of the Act, or free of rent if granted after that date, so long as the service tenure subsists.

Ryot is defined as a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it. Occupancy right is defined as a ryot having a permanent right of occupancy in his holding and the term Kudidvaram interest is generally used only in this sense. Private land means the domain or home-farm land of a landholder by whatever designation known such as Kambattam, Khas, Sir or Pannai. Section 6 of the Act declared the right of the tenant in the soil by conferring on him permanent right of occupancy in his holding.

In order to treat the possession as lawful, a ryot in possession of land must show that his possession was with the consent of the landholder or at least not against his will.

Occupancy right of a ryot is heritable and also transferable by sale, gift or otherwise. If a ryot dies intestate in respect of a right of occupancy leaving no heirs except the Crown, his right of occupancy will be extinguished, but the land in respect of which he had such right of occupancy does not cease to be a ryoti land. A ryot is liable to pay rent either in money or in kind as the landholder will be entitled to collect. A landholder is entitled to collect rent in respect of a ryoti land occupied by ryots and the rent so payable by the ryot and any interest which may be due in respect thereof will be the first charge on the holding and upon the produce of the land. The landholder is entitled to distrain and sell the properties of the ryot for non-payment of rent. Principles of settlement under Ryotwari system: A field to field settlement, called, Kulwar settlement, was followed by Thomas Munro to ascertain what fields are occupied by each ryot and to enter them with fixed rents attached to them in his patta, their aggregate constitutes his rent (revenue) for the year. As per Munro, the term settlement was used not for the money rate, but for the extent of land .

In his report sent to the British Government in 1807, Munro stated that the ryotwari system is better adopted to preserve simplicity of manners and good order, because every ryot will, on his own estate, be a proprietor, farmer and labourer; because a great body of small proprietors instead of a few zamindars or mutthadars will be interested in supporting the Government.

As a result of the Read and Monro reforms accepted by the British Government, the annual settlement hitherto followed by the settlement system of leases for fixed tenures has given way to a somewhat permanent settlement (30 years duration) in favour of ryots, subject to availability of option to them to give up the land in their holding and opt for another land, subject to its availability.

Identification of land in Ryotwari settlement: Baden Powell described ryotwari settlement as survey-assessment. He quoted Dr. Maclean saying, it (revenue settlement) as the division of all

arable land whether cultivated or not, into fields, and the assessment of each field at fixed rate for a term of years. The occupant pays the revenue so assessed on the area he actually occupies. This area may be standard or varied from year to year by relinquishment of old fields and taking up of new, which are either available as waste or as given up by some one else. The occupant deals directly with the Government and is responsible for no ones revenue, but his own. He holds in every case, a patta showing his fields and the revenue assessed. Every year, an annual settling up or jamabandi takes place at which the patta of each ryot is tested, and if need be corrected, to see what land he has actually held and what remissions, if any, he is entitled to, on the full revenue of his holding .

The settlement so undertaken was completed in 1886-87 in as many as 14 Districts in Madras Presidency and was in progress in five Districts. The completed Districts included Godavari, Krishna, Nellore, Kadapa and Kurnool, and the settlement was in progress in Bellari and Anantapur Districts.

Preparation of record: On completion of settlement, the entire area of the village was entered in the Land Registers under the following categories: (i) Assessed ryotwari land; (ii) Inam land granted free or at reduced rates for village service, charitable, religious or other purposes, within the village (iii) Waste cultivable; (iv) Unassessed waste, including poramboke, which means, unassessed waste set-aside for special purposes as for the village residences site, threshing floor, burial ground, site of a well, grazing ground etc. Rough pattas (like chitta of village settlement in Punjab) are then given out so that each ryot may see what is going to be put down in the Register as far as it affects him. After all that is done, the completed Registers of each village prepared in English and in the vernacular (Diglott) are forwarded to the Settlement Commissioners office to be printed. The following are the records prepared after settlement :

(i) Settlement Register : This register is also termed as Diglot or A Register. It is the foundation on which the whole revenue administration rests. It forms complete recording of accurate information as to whether it is Government or inam land, dry, wet, unassessed or poramboke, source of irrigation, class and sort of soil, taram, rate per acre, extent etc. It records every separate holding, whether large or small. The area is given in acres and cents and the assessment thereon stands in parallel columns. If a single field on the survey map is divided among ryots, a special letter is allotted to each ryot with a separate line giving full particulars of his holding.

(ii) Ledger/Chitta: From the Settlement Register is prepared a ledger known as Chitta giving each ryot personal account with the Government. Every field or a fraction of a field held by the same ryot is picked out from the Settlement Register and entered in this ledger under his name with particulars of area, assessment and other details. The total of the area shows the extent of his different holdings in the village and the total of the assessment is the amount due thereon by him to the Government. A copy of this is given to each ryot with a note as to the date on which each instalment falls due and the same is known as patta.

(iii) Memoir and village maps: This memoir is prepared in English giving full description and details touching each village and its settlement and an account of all lands held revenue rent free or on favourable tenure is also printed. A sketch map of the village showing the tanks and channels and all similarly assessed fields laid out into blocks is attached to it. It is an index to the Field Measurement Book (FMB).

(iv) Field Measurement Book: It contains pictorial representation of the survey fields and sub-divisions. A record of measurement of individual fields and sub-divisions is thus provided which will enable any inspecting officer to identify the boundaries whenever it is required for investigation of the disputed boundaries, for detection of encroachments, for measurement of further sub-divisions etc. It also enables the revenue officials to check the cultivation of each holding during azmaish. Three copies are prepared by the survey authorities. The original copy is preserved in State Archives, duplicate is supplied to Tahsildars office and the triplicate copy is supplied to the Village functionary.

Settlement of Inam claims: The settlement was done under ryotwari tenure. Where parts of land were revenue free or covered by reduced revenue, they were shown in the Village Registers. Where the whole village is inam, it constitutes a separate estate like a zamindari or a pollam and it does not come within the scope of settlement. The Government had no claim to the land or to the revenue unless there is a fixed quit rent, which is recorded as permanently settled revenue or pesh-kash of the zamindari or pollam estate. A special procedure was adopted under which the right and title of the holders of these favoured estates was elucidated and put on a sound basis. In Madras Presidency, as was in Bombay, while the ryotwari lands were treated as Government lands the inam lands were treated as alienated as the Government has parted with its right of assessing the land and revising the assessment, the same being either rent free or more commonly charged with jodi or quit rent, which is unalterable. The following inams were recognised :

(i) Inams proper, where the land granted is either a field, or a village, or a village or a group of villages;

(ii) Mohammadan jagirs, which were personal grants.

(iii) Shrotriyams and agraharams: These are grants to certain classes of Brahmins.

These inams include the inams given for religious institutions, public utility such as for the support of choultries etc.; construction maintenance and repair of irrigation works in the ceded Districts, in Kistna, Nellore, North Arcot and Salem; to Brahmins and other religious persons for their maintenance; maintenance grants for the families of poligars ancient land officers in the ceded Districts, Changanput etc. Permanent accounts at Taluq/Mandal Level: These accounts consisted of five Registers representing the state of the land and its assessment as fixed at settlement. They are adaptations of the Registers made at survey-settlement.

(i) Register-A: It shows every field (survey field and sub-division) in the village, whether Government or inam, wet, dry, cultivated or poramboke, the source of irrigation; whether one crop or two, what group it is in, what is its soil class, the taram or revenue rate applied, the extent in area and the total assessment, the name of the occupant and remarks.

(ii) Register-B: It is a register of any inam fields in the village, giving particulars of the field, its taram, its quit-rent, the part of this payable to Imperial Revenue and the part to the village service fund.

(iii) Register-C : It shows the sources of irrigation and the fields included in the area of or ayacut supplied by each.

(iv) Register-D: It shows the area occupied and charged as irrigated under each source of irrigation for a series of years.

(v) Register-E: It shows the land revenue settlement for a series of years under dry and wet showing the area and assessment of holdings, waste remitted (i.e., allowance for unculturable bits like the pot kharab of Bombay), the waste, and the net charge, besides miscellaneous revenue, local and special funds. Columns at the end show the actual collections on this demand.

While the above discussed record pertains to survey and settlement of both Government (ryotwari) and inam lands maintained at Taluq level, the record discussed infra relates to Revenue accounts maintained at village level.

Village accounts (Pre-Independence): These accounts consist of as many as 38 Registers. The following are notable among them :

No.1 Accounts: This Register shows the particulars of monthly cultivation for each field by its number and letter, whether Government or inam, the source of irrigation, the name of the holder, the kind of crop raised (first and second).

No.2 Account: It is also popularly known as Adangal or annual statement of occupation and cultivation, field by field. It shows the fields (Government or inam, number and letter, revenue-rate (taram), single or double crop, area and assessment) as they appear in the Settlement survey or Mamool account. The next follows the name of the holder, sources of irrigation if any, the occupation, the actual cultivation and remarks of the karnam. Adangal forms the main basis of annual jamabandi settlement.

No.3 Account : It is the Annual Register of changes. It contains entries of fields taken up on darkhast, transferred by sale, relinquished, sold for arrears of Government revenue, converted from single to double crop land etc. No.10 Account: It is a sort of individual chitta or personal ledger of each cultivator. Section-I shows the particulars of the original holding, additions by transfer, or by land taken up on application etc.,

under dry and wet separately. Section-II shows the assessment on these lands, deducting remissions and adding miscellaneous revenue, land cess, village service and special funds.

No.11 Account: It is the form of patta granted to each ryot. Register of Holdings: This is a very important Register maintained at the village level under Board Standing Order 31. It is apt to extract sub- para-1 thereof, which is as under:

The register of holdings kept in every village should, as far as possible, show the names of persons who are the real owners or who, in virtue of their title, whatever its nature, are in the enjoyment of the lands and it is of great importance that the register should be maintained accurately and upto-date, as it is to the registered-holder that the Collector must look for the revenue from the land. The following instructions are therefore laid down for regulating the procedure to be adopted in effecting changes of registry in the revenue accounts when transfers of landed property take place. (Emphasis added) The agrarian reforms:

A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948:

This was the first legislation made after the Independence governing the agrarian reforms. As could be seen from its Statement of Objects and Reasons, the main purpose of the Enactment was to abolish the Zamindari system in the Madras province. The Act is intended to confer rights in lands on cultivators/pattadars by introducing ryotwari system in the Estates . The Statement by the Honble Revenue Minister while presenting the report of the Joint Select Committee to the Legislative Assembly throws light on the land tenure in the Madras province under the British rule. It is evident from the said speech that permanent settlement introduced by Lord Cornwallis acting for the British Government, was sought to be done away with, thereby bringing the cultivators directly under the control of the Government. The long title of the Act reads :

An Act to provide for the repeal of the Permanent Settlement, the acquisition of the rights of land holders in permanently settled and certain other estates in the State of Andhra Pradesh and the introduction of the ryotwari settlement in such estate.

Whereas it is expedient to provide for the repeal of Permanent Settlement, acquisitions of the rights of landholders in permanently settled and certain other estates in the State of Andhra Pradesh and the introduction of the ryotwari settlement in such estates;

The Act repealed the Estate Land Act, 1908. Under Section 3 of the Act, on and from the notified date, the entire estate land and communal lands, porambokes, other non-ryoti lands, waste lands, pasture lands, lanka lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries, shall

stand transferred to the Government and vest in them free of all encumbrances. However, under the proviso to Section 3 of the Act, the Government shall not dispossess any person of land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta under the proviso to Section 3 of the Act. The Act envisaged appointment of functionaries such as Director of Settlements, Settlement Officers, Managers of Estates etc., and gave control to the Board of Revenue inter alia for giving effect to the provisions of the Act, superintendence of taking over of estates to make due arrangements for interim administration therefor. The Act also abolished inam estates. Under Section 11 of the Act, every ryot in an estate shall, with effect on and from the notified date is entitled to a ryotwari patta in respect of all ryoti lands which immediately before the notified date were properly included or ought to have been properly included in his holding and which are not either lanka lands or lands in respect of which a landholder or some other person is entitled to a ryotwari patta under any other provision of the Act and all lanka lands in his occupation immediately before the notified date, such lands having been in his occupation or in that of his predecessors-in-title continuously from 1st day of July 1939. Under Section 12, in case of zamindari estate, the land holder shall with effect on and from the notified date be entitled to ryotwari patta in respect of all the lands mentioned in clauses(a) and

(b) thereof. Section 13 enumerated the lands situated in an inam estate in which the land holder is entitled to a ryotwari patta. Under Section 14, the land holder is entitled to ryotwari patta in respect of the lands in an under-tenure estate. The Act also made provision for survey and settlement of the estates, the manner of effecting ryotwari settlement of estates, determination of land revenue before the ryotwari settlement is brought into force, payment of compensation to land holders etc. A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956: This Act was made for the abolition of minor imams, including charitable and religious service imams . Under Section 4 of the Act, in case of inam land in a ryotwari or Zamindari village, a person or institution, holding such land as inamdar on the date of commencement of the Act shall be entitled to a ryotwari patta in respect thereof. Under Section 7, the Tahsildar may suo motu and shall on application by a person or institution, after serving notice in the prescribed manner on all the persons or institutions interested in the grant of ryotwari pattas in respect of the inam lands concerned and after giving them a reasonable opportunity of being heard and examining all the land records determine the persons or institutions in accordance with the provisions of Section 4 and grant them pattas in the prescribed form.

Land tenure in Telangana Area: Before the Telangana Area was included in the State of Andhra Pradesh with effect from 1-11-1956, it was a part of the Hyderabad State. The land revenue system in the Hyderabad State is extensively dealt by the book titled Survey and Settlement Manual of Hyderabad published under the auspices of the then Revenue Secretary Nagendra Bahadur and P.N. Krishna Swami, Officer on Special Duty. This Manual in turn has gathered information from two standard books i.e., Hyderabad Affairs by Moulvi Syed Mehdi Ali and Hyderabad under Sir Salar

Jung by Moulvi Chirag Ali. I am able to collect the history concerning the land revenue system in the Hyderabad State by referring to the above mentioned Manual. I have also referred to and relied on the Hand Book of Land Records by Mr. P. Kasturi Reddy. As could be culled out from these books, the brief history of the land revenue system in the Telangana Area is referred hereunder :

Under the Muslim rule, revenue was generally farmed out. Traces of settlement made by the Bahmani Kings and by the Adilshahi and Kutubshahi rulers were found in some places. Regular settlements were introduced only when Akbar annexed Berar in 1596 and Malikambar became the Governor of Aurangabad. The assessment according to Akbars settlement was fixed by measuring the arable lands and making a careful assessment of the produce. The land was measured in Bighas. Revenue was assessed on 1/4th of the estimated produce per each Bigha and the total demand on a village was termed as Tankhwah or Standard rent-roll. The assessment was originally based on the quantity of the grain sown in a field or on its produce on which a certain share was taken by the State as revenue.

Though the assessment was based on the ryotwari system, in reality it was Villagewar or Mozawar. Each village was separately assessed as a whole. Any deficiency in the revenue which might arise owing to relinquishment of certain fields by the cultivators or desertion by the ryots from the village was made good by taxing other cultivators proportionately in excess of the proper amount so as to cover the loss sustained. Thus the responsibility of the people of the village was sought to be enforced, the main object being that the revenue from the village did not fall short of the previous revenue. Revenue payments were either in cash or in grain. Standing crops were not permitted to be removed until the Government demand has been first satisfied. Reforms introduced by Sir Salar Jung:

As in Andhra area, there were two kinds of land tenures under the Nizam rule. They were (i) Khalsa and (ii) Non-Khalsa. Khalsa areas were equivalent to Ryotwari lands in Andhra area, directly under the control and administration of the Government.

Sir Salar Jung became the Prime Minister in 1853. After assumption of office of Prime Ministership, Sir Salar Jung abolished the system of revenue farming. The State undertook to deal directly with the cultivators, the practice of assessing villages in the gross was discontinued and the method of assessing each individual cultivator was introduced. These beneficent reforms led to a security of tenure of the cultivator and the area under occupation steadily increased. However, there were certain drawbacks in the system. The fields had not been accurately measured; the soils had not been classed according to their relative values and as a natural consequence it followed that the assessments were very unequally distributed on the different holdings.

The Government therefore decided on introducing a regular survey and settlement into the State in 1875. In Hyderabad ryotwari system prevailed. In the north-west

provinces, the tenure was a Zamindari one. Before the settlement operations were extended to the Telangana Area, the period of settlement was for 30 years. However, after the settlement operations were extended to the Telangana Area, the period of guarantee of settlement was reduced to 15 years only. In five years period upto 1880, 94,61,328 acres were surveyed. Classification operations were completed in respect of 50,29,863 acres. Non-Khalsa: Non-Khalsa areas were areas in respect of which the land tenure was different from Khalsa areas. These areas would include jagirs and imams. These are equivalents of estate tenure/overlord tenure in the Andhra area. The intermediary between the cultivating ryot and the Government in these areas would be the landholders i.e., the jagirdars/inamdars/mukhtedars etc., who controlled the administration of non-Khalsa villages and they would collect the land revenue from the cultivating ryots in relation to these areas.

The expression Jagir includes (a) Paiga, (b) Samsthan part of Jagir, (c) Village Mukhtha, (d) Agrahar, (e) Umla and (f) Mukasa (This definition is found in Regulation 2(f) of the Abolition of Jagirs Regulation, 1358 Fasli).

The expression Inam is defined in Section 2(10) of the Land Revenue Act, 1317 Fasli and is also defined in Section 2(1)(c) of the A.P. (Telangana Area) Abolition of Inams Act, 1955.

After abolition of Jagirs/Inams, the entire tenure in the Telangana area became uniform and the Khalsa tenure applied even to the areas that were hitherto non-Khalsa areas.

Hyderabad Land Revenue Act, 1317 Fasli and the Hyderabad Record of Rights in Land Regulation, 1358 Fasli :

In Telangana Area, the two most important among the statutory enactments are the Hyderabad Land Revenue Act, 1317 Fasli (for short the 1317 Fasli Act) and the Hyderabad Record of Rights in Land Regulation, 1358 Fasli (for short the 1358 Fasli Regulation). The 1317 Fasli Act is a comprehensive enactment intended to govern the entire revenue administration in the erstwhile Hyderabad State. It provided for appointment of Revenue officers and defined their powers. Section 24 thereof declared that all public roads, lanes, paths, bridges, ditches, dikes, rivers, streams, tanks, ponds etc., except those belonging to persons or class legally capable of holding property and those in respect of which any other order under any law may have been given, are the property of the Government. Chapter V of the Act (Sections 54 to 76) specifically dealt with Khalsa lands. It provided for granting of pattas/assignments of khalsa lands. It also provided for succession in case of death of pattadars. It has further provided for revising the settlements in Tehsils after the expiry of the period of first settlement. It is the first enactment which statutorily prescribed Revision Survey and Settlement. Chapter VII thereof provided for Settlement and Partition of areas. Section 77 provided for survey of any land for the

purpose of settlement and assessment of land revenue and record and preservation of the rights relating thereto, or for any other similar purpose. Section 78 authorised the Survey Officer to require the attendance of the land holders and holders interested in such persons by issuing general notice or summons. Section 81 provided for making of assessment by the Settlement Officers. Section 86 provided for preparation of register.

Under this provision, the Survey Officer is bound to maintain at each settlement, a separate register called Sethwar for each village showing the area and assessment number together with the name of the pattadar. The nature of record prepared and maintained under this Act will be discussed at appropriate place hereafter.

The Hyderabad Land Revenue Act, 1317 Fasli and the Hyderabad Record of Rights in Land Regulation, 1358 Fasli are not only inter-related but are complementary to each other. They are comprehensive pieces of legislation dealing with the rights and obligations of pattadars/owners of the land and the duties of the revenue officers appointed by the Government.

Land Revenue Rules, 1951: These are statutory rules framed under Section 172 of the Land Revenue Act, 1317 Fasli and the various rights and responsibilities of the pattadar are enumerated thereunder. Rule 4 thereof stipulates the conditions on which the registered holder may alienate the land. Rule 5 deals with transfer of registry of holding. Rules regarding grant of pattadari rights in Non-Khalsa villages:

These rules were framed under Section 172 of the Land Revenue Act, 1317 Fasli and were published during the year 1356 Fasli (1946 A.D.) as a precursor to the Abolition of Jagirs Regulation, 1358 Fasli. Under these Rules, the land tenure in Jagirs was equated with that in the Khalsa villages (villages administered by the Government directly). Rule 2 of the said rules reads as under:

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

A reading of the above provision would indicate that after coming into effect of the aforementioned rules, persons holding Jagir land and hitherto paying revenue to the Jagirdars, would become the pattadars of the said lands and would have the legal status of pattadars holding Khalsa lands (Khalsa villages were directly controlled by the Government).

The Hyderabad Abolition of Jagirs Regulation 1358 Fasli (1948 A.D.):

This statute, which came into force on 20-9-1948 marked a watershed in the history of land tenures in the Telangana Area. The statement of objects and reasons thereof, reads as under :

Whereas it is expedient to abolish jagirs and to provide, pending determination of terms of commutation for payment to jagirdars and hissedars of certain interim allowances Under the said statute, the jagirs were abolished and were transferred and included in the Diwani i.e., the Government, and pending such inclusion, were to be administered by the Jagir Administrator. Statutory Rules were also framed thereunder and a separate regulation for commutation was also enacted, i.e., Jagirs (Commutation Regulation 1359 Fasli for the purpose of the procedure in relation to payment of commutation sums. The Jagirdars Debt Settlement Act, 1952 was also enacted. Under the Atiyat Enquiries Act, 1952, the procedure for determining the commutation for abolished jagirs, compensation for abolished imams etc., was prescribed.

The Hyderabad Abolition of Inams Act 1955: Under this statute, imams in the erstwhile Hyderabad State (i.e., including Telangana Area) were abolished and vested with the State with effect from date of vesting. The date of vesting was 20-7-1955, which was notified in the official Gazette, as specified in Section 2(b) of the said statute. However, the date of determination of occupancy rights was 1-11-1973. This unusual and avoidable circumstance wherein there were two dates crucial for the purpose of the said statute, arose because the Abolition of Inams Act, 1955 was repealed by a new Act i.e., Act 8 of 1967 and the Act of 1967 was declared void and not protected by Article 31A of the Constitution of India by this Court in Raja S.V. Jagannadha Rao and others Vs. State of A.P. and others . As a result of the pending litigation and the challenge to Act 8 of 1967, resulting in the said statute being declared void, the provisions of the Abolition of Inams Act, 1955, could only be enforced in letter and spirit after the said judicial decision on the issue. As a result, for the purpose of determination of occupancy rights, the crucial date was 1-11-1973.

The Hyderabad Tenancy and Agricultural Lands Act, 1950:

This important statute was enacted in the year 1950 and its Preamble reads thus:

Whereas, it is expedient to amend the law regulating the relations of landholders and tenants of agricultural land and the alienation of such land.

And whereas it is also expedient to enable landholders to prevent the excessive sub-division of agricultural holdings to empower Government to assume in certain circumstances the management of agricultural lands, to provide for the registration of Co-operative Farms and to make further provision for matters incidental to the aforesaid purposes.

This statute introduced drastic reforms in land tenure and provided for conferring absolute ownership of lands held by protected tenants under Section 38E thereof, thereby transferring such ownership in their favour w.e.f. the notified date i.e., 1-11-1973. Several sets of statutory Rules were framed under the said enactment dealing with various contingencies.

The Telangana Area Land Census Rules, 1954: These rules were made under Section 97 of the Tenancy Act. Under these Rules, land census, as defined by Rule 2(f) of the Rules, was taken up by the Government. The important record i.e., Khasra Pahani is a document prepared under these Rules. Rules 8 to 13 speak of provisional Khasra Pahani and Rule 14 speaks of fair copy of Khasra Pahani. The said record is an important record and entry as pattadar in the same would confer absolute title over the land occupied. Laoni Rules issued vide Gashthi No.19 of 1347 Fasli (1937 A.D.):

These rules were framed under Section 172 of the Land Revenue Act, 1317 Fasli and dealt with grant of Laoni (assignment). There was no non-alienation clause in those grants made under the said provision. Laoni Rules 1950: These are statutory Rules framed under Section 172 of the Land Revenue Act 1317 Fasli and deal with assignment of lands. These Rules were amended by the Revised Assignment Policy vide G.O.Ms.1406, Revenue, dated 25-7-1958 and for the first time non- alienation clause was incorporated in the conditions of assignment hitherto dealt with under the Laoni Rules.

Government Order No.9, dated 27-10-1949: Reorganisation of the Survey and Settlement Department was undertaken by the Hyderabad State under Government Order No.9, dated 27-10-1949. Before such reorganisation, two revision surveys were conducted in most of the places. This Government Order has divided the Hyderabad State into three Circles as noted below :

(a) Aurangabad Circle with headquarters at Aurangabad, comprises the districts of Aurangabad, Nanded, Bhir, Parbhani, Nizamabad and Osmanabad.

(b) Gulbarga Circle with headquarters at Gulbarga, comprises the four districts of Gulbarga, Bidar, Raichur and Mahabubnagar.

(c) Warangal Circle with headquarters at Warangal, comprises the districts of Warangal, Adilabad, Karimnagar, Medak, Hyderabad and Nalgonda.

Each Circle was placed under a Deputy Commissioner. Survey was held by classifying the lands broadly under the categories of dry, wet or garden lands.

Portions of land which are either uncultivable or should not be allowed to be cultivated in the interests of public were treated as pot kharab lands in respect of which no assessment is to be levied. The area determined and treated as pot kharab are excluded from the total area of each survey

number and the balance area is only liable to be assessed. The pot kharab lands comprise foot paths, cart tracks, wells, out-cropped rocks, gokattes or other small kuntas which are not treated as separate survey numbers; topes - places where trees are found together and which are intended to be retained for being used as such and where it is usual to hold annual Jattras, weekly markets, or such other functions, are usually assigned pot kharab by multiplying length and width; places set apart for use of the community at large or Hallas or Nalas, cattle tracks or made Roads and Railways, trees; the area over which shade of big trees falls; cultivation ridges, area covered by buildings etc. Land records in Telangana Area:

The Hyderabad Record of Rights in Land Regulation 1358 Fasli Act (for short 1358 Fasli Regulation) governed the preparation and maintenance of record of rights in land in Hyderabad State. Section 3(c) defined land records to mean the records under the provisions of, or for the purposes of that Regulation and the Hyderabad Land Revenue Act 1317 Fasli. Section 4 mandates preparation and maintenance of records in all lands and the record of rights shall include the names of all persons who are holders, occupants, owners and mortgagees of land or assignees of the rent or revenue thereof, the nature and its extent and the respective interests of such persons and the conditions or liabilities (if any) payable by or to any of such persons and such other particulars as may be prescribed. Such record is to be prepared after due enquiry. Section 6 deals with mutation and enquiries thereof and publication of records. Under Section 13, any entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. The note on Rule 3 of Hyderabad Record of Rights Rules, 1956 made under the Hyderabad Land Revenue Act, 1317 Fasli reads The pahani patrika now in use, contains besides columns 1 to 19 of Form No.1, several other columns pertaining to agricultural statistics; and columns 1 to 19 of pahani patrika which corresponds to Form-I shall be deemed to be the Record of Rights.

Survey and Settlement records:

Sethwar Register: This is equivalent of A-Register/Diglot in Andhra Area. After disposing of all the representations/appeals filed by the khatedars for the correction of survey errors, a final survey register is prepared called Sethwar Register. This Register is regarded as the king of all Registers. This contains the full details of survey number, patta/grant, gairan/inam, name of the khatedar, total area, pot kharab area, balance area, rate of assessment (Dhar), final assessment in case of wet lands, sources of irrigation etc. Wasool Baqi Register: After completion of Akarband Register at the final stage of Jamabandi process, a very important register, written on the Alphabetical order of the Khatedars (pattadars) of the village, showing all old S.Nos., extents and assessments of the khatedar on one page and on the opposite page the details of corresponding New S.Nos., extents and assessments is prepared which is called as the Wasool Baqi register or correlation register. All old entries of the khata are noted down as per the Theka Bandi Register, which is prepared basing

upon the revenue records existing at the time of classification of soil work (Parath bandi) and got it attested by the concerned Tahsildar.

The corresponding new survey details shown on the opposite page, are noted down as per the entries recorded in the just prepared Akar land register.

At the end of the entries of each khata, totals are noted for old entries and corresponding new survey entries. This will give the clear picture of each khata particularly to ascertain the discrepancy of extents if any .

Village Accounts (Pre-Independence): After completion of Survey and Settlement and announcement of settlement rates, a copy of the Basic records (ie) Village map, Sethwar Register and Wasulbaqi Register will be supplied to the Tahsildar. Tahsildar will get two copies of Pahani prepared by the Patwari in his office and attested by him. Pahani is an important Register maintained by the Patwari for the purpose of Azimash and also for various statistical Returns and accounts to be prepared by him in connection with day to day Land Revenue Administration. This corresponds to No.2 Account i.e., Adangal maintained by the village Karnams in Andhra region. One copy of the village map, and Pahani are supplied to the Patwari. In order to collect land Revenue, Patwari will have to prepare Chowfasla register Khatawise yearly along with Pahani. One copy of the Sethwar is sent to Central Survey Office.

One copy of the village map, Sethwar, Wasulbaqi Register, and Pahani are kept in the Taluk office. All the remaining Survey and Settlement Records are transferred to the District Land Record Office which is part of the Collectors office .

Following were the important Registers among 40 Registers to be maintained by the Patwaris:

1. Pahani patrik .. Register No.3
2. Choufasla .. Register No.4
4. Qabile Wasool .. Register No.8
5. Jamabandi Goshwara .. Register No.9
6. Araziyath Sarkari .. Register No.10
7. Araziyath-e-Inam .. Register No.11
8. Zarai Abupashi .. Register No.19
9. Kist Bandi .. Register No.20

10. Asamwari Wasoolbaqui .. Register No.21

11. Irsalnama .. Register No.23

12. Kirdi .. Register No.27

13. Khata .. Register No.28

14. Khartiwar Rainfall .. Register No.33

15. Paidawar Register .. Register No.34 Village Accounts after Independence: Prior to Independence, land revenue was the main source of income to the Government in both Andhra and Telangana regions. The main function of the Revenue administration was fixation of revenue demand and collection of land revenue. There were 38 village accounts in Andhra Area and 40 village accounts in Telangana Area. The purpose of maintenance of these village accounts was mainly fixation of assessment and watching revenue collections. After Independence, land revenue was no longer the source of revenue to the Government as it used to be and maintenance of land records lost its significance. The Government has reduced village accounts from 40 to 22 in Telangana Area and from 38 to 23 in Andhra Area vide G.O.Ms.No.599, Revenue (N) Department, dated 1-7-1976 and G.O.Ms.No.1474 Revenue (N) Department, dated 15-12-1979, respectively. Account No.2 adangal in Andhra Area and Account No.3 (pahani) in Telangana Area have been integrated vide G.O.Ms.No.734 Revenue (N) Department, dated 27-4-1983 and G.O.Ms.No.1070 Revenue (N) Department, dated 6-8-1983. The Estimates Committee of 1985-86 has recommended in its third report, appointment of Specialists Committee for introduction of common village accounts for both the regions in view of the evolution of institution of Village Officers. The Specialists Committee was appointed by the Government under the Chairmanship of Commissioner of Land Revenue vide G.O.Ms.No.115 Revenue (N) Department, dated 8-2-

1989. Based on the recommendation of the Specialists Committee, 11 village accounts common to both the regions were introduced vide G.O.Ms.No.265, Revenue (LR-II) Department, dated 10-3-1992. The following new integrated records have been adopted from 1-7-1992 i.e., 1402 Fasli.

Survey and Settlement record:

(i) Village Map, (ii) Field Measurement Book, (iii) Printed Diglot or A-

Register.

Revenue record :

(i) Village Account No.1 Register showing Government lands and land on lease, assignments, alienations and area available for assignment.

(ii) Village Account No.2 Register of changes in the village (Annual Register).

(iii) No.3-Register Statement of occupation and cultivation field by field (columns 11 to 15 of this Account are meant for record of rights)

(iv) Village Account No.4 Register of holding and land revenue demand (Column Nos.8, 16 to 19, 24 to 28, 30 to 33 are not applicable in view of abolition of land revenue).

(a) Documents of ownership/title :

Having traced the backdrop of the land tenures and the evolution of ryotwari system, the stage is set for considering what are the documents that constitute ownership/title to land. The Board Standing Orders (BSO) of the Board of Revenue of Madras (1907 Edition) succinctly dealt with the rights and obligations under a patta. Paras 27 and 28 of the BSO included in Part III Title to Land read :

27. Issue of pattas (1) Form of patta The Form of patta is given in the Manual of Village Accounts.

(2) Renewal of patta As a rule, fresh pattas need only be issued when desired by the ryots concerned. When the holding of a ryot has undergone no change, it is obviously unnecessary to issue fresh patta. Each ryot should have one original patta containing a detailed list of the fields comprising his holding as it stood when the patta was drawn up. The pattas of future years should show only the changes which have taken place in his holding or in the revenue payable by him. In the event, however, of numerous changes taking place in the original patta, it may be convenient to issue a fresh one.

(3) (Omitted as not relevant) (4) Entry of names in joint-patta The entries of names in a joint-patta will be made without reference to the extent of land enjoyed by each pattadar.

28. (1) Effect of registry as pattadar : The registered pattadar of a ryotwari holding is, as regards Government, the responsible proprietor of the ryotwari lands registered in his name in the Land Register of the district, until they pass from his possession by sale for arrears or in some other legal manner. Lands which a ryot has left waste will not be struck out of his patta on that account.

1. Conditions on which pattadar may alienate : A registered pattadar may, so far as Government are concerned, alienate, sublet, mortgage, sell, give, bequeath, or otherwise dispose of the whole or any portion of his holding, provided always : (1) that unless and until such transfer or disposal is registered in the Land Register of the district, the registered pattadar remains liable for the assessment and such other legal charges due on the land, just as if no such transfer or disposal had

occurred; and (2) that when the transfer is registered, the transferee takes the land subject to payment of any arrears of assessment or other legal charges due on it, and to the same obligations and conditions, special or general, as the transferor held it on.

2. Effect of absence of pattadar: Mere prolonged absence of non- occupation does not invalidate the right of transfer just mentioned.

3. Patta not affected by improvements: A registered pattadar improving his holding by constructing a tank on it, digging a well, or erecting buildings on it, is not chargeable with any additional assessment for such improvements; but he is not entitled to claim, as of right, any reduction of assessment on account of the space occupied by such improvements.

4. Pattadars obligation: The registered pattadar of a field or holding is bound to pay the fixed assessment on it, whether cultivated, waste or fallow, in the presented instalments, unless it be remitted in accordance with the rules laid down in Standing Order No.13.

5. Currency of patta : A patta retains its validity until superseded by one of later date. It does not necessarily require renewal from year to year.

6. Mineral right of pattadar: The registered pattadar is entitled to work minerals on his land, but is liable to pay therefor a separate assessment in addition to the usual assessment for surface cultivation.

7. Joint-pattadars rights to receipt book: Sub-receipt books should be given to all holders of land on joint-pattas who want them. The entries in these sub-receipts will be transferred to the principal receipt book when it is produced for the purpose before the village officers by the possessor. The sub-receipts will be in the same form as the receipt, but will not mention the extent of the land on account of which payment is made.

8. Tree-patta: For the rights and restrictions implied in a tree-patta vide Standing Order No.18, paragraph 2, clause b(ii).

It is thus deducible from the above that the British treated patta as a document whereunder possessory right with absolute rights to alienate, sub-let, mortgage, sell, bequeath or otherwise dispose of in any manner he likes were conferred on the pattadar.

It is not out of place to note here that two enactments gave statutory recognition to pattas. They are (1) the 1317 Fasli Act covering the Telangana area and the A.P. Rights in Lands and Pattadar Passbooks Act, 1971 (for short the 1971 Act) which covered the entire State of Andhra Pradesh from the time of its coming into force.

Section 2(11) of the 1317 Fasli Act defined pattadar as the person who is directly responsible to the Government for payment of land revenue and whose name has not been entered as such in the Government records whether he be in personal possession of the holding or through his shikmidar.

Section 2(12) defined shikmidar as the person who, like a pattadar possesses a title to the land or who from the beginning has been jointly in possession of the land with the pattadar or who, before the commencement of the Act has acquired by virtue of any regulation in force or may acquire by virtue of that law, the right of a shikmidar. From these two definitions, it is clear that a patta is recognised as a document of title/ownership in Telangana area.

For the first time, the record of rights in Andhra Area was brought under a statutory enactment viz., the 1971 Act. It has been enacted for the entire State of Andhra Pradesh. It has repealed the 1358 Fasli Regulation and all standing orders and any other provisions of law relating to the record of rights in the land in force in the State. Sub- Section (6) of Section 2 thereof defined occupant as a person in actual possession of land, other than a tenant or a usufructory mortgagee. Sub- section (6)(a) defined owner as a person who has permanent and heritable rights of possession on the land which can be alienated and includes the holder of a patta issued to him as a landless poor person. Sub-section (7) defined pattadar as including 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 and who is liable to pay land revenue. Sub-section (9) defined record of rights (ROR) as records prepared and maintained under the provisions or for the purposes of the Act. Section 3 envisages preparation and updating of ROR in all lands. Section 4 obligates every person acquiring rights as owner, pattadar, mortgagee, occupant or tenant of the land or otherwise to intimate such acquisition of rights to the Mandal Revenue Officer (Tahsildar). Section 5 provides for amendment and updating of ROR. This provision also provides for the remedy of appeal by an aggrieved party. Section 5-A provides for regularisation of certain alienations. Under Section 5-B, an aggrieved party is entitled to file an appeal against the order passed under Section 5-A. Under Section 6, every entry in the ROR is presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of the Act. Section 6-A, which was introduced by Act 11 of 1980, provided for issue of pattadar passbook and title deed to every owner, pattadar, mortgagee or tenant of any land. Sub-Section (5) of Section 6-A declared that the title deed so issued shall be the title deed in respect of owner-pattadar and it shall have the same evidentiary value with regard to the title for the purpose of creation of equitable mortgage under the provisions of the Transfer of Property Act, 1882 as a document registered in accordance with the provisions of the 1908 Act. Section 9 empowers the Collector to revise the orders of the lower authorities passed under Sections 3, 5, 5-A or 5-B in respect of any ROR prepared and maintained or to satisfy himself as to the regularity, correctness, legality or propriety of any order passed by the recording authority i.e., the Mandal Revenue Officer of Revenue Divisional Officer.

The A.P. Rights in Land and Pattadar Passbooks Rules, 1989 were made under the rule making power of the State Government under Section 11 of the 1971 Act. Rule 3 ordains that an ROR shall be prepared and maintained in Form-I for every separate revenue village. Under the Note to the said Rule, it is mentioned that pahani/adangal does not constitute the ROR for the village and that it reflects the ground position including the name of the cultivator who actually cultivates the land; and whether the person in occupation of the land has violated any law and if so, the details of the same. The Rules provided for elaborate procedure for preparation of ROR which shall be prepared in Forms-1 and 1-B in triplicate. After finalisation of such ROR, the pattadar passbook and title deed shall be issued in favour of the persons in whose names the ROR is prepared.

A Division Bench of this Court in Syed Jalal and others Vs. Tarrgopal Ram Reddy and others while construing various provisions of the Land Revenue Act 1317 Fasli observed that indubitably the patta of agricultural land itself is evidence of right of the holder a transfer of which is also deemed to be a permanent alienation.

It is thus evident from these statutory provisions that a pattadar under ryotwari tenure and his successors in interest without any doubt hold title for the land covered by the patta. The purchaser from the pattadars or their successors-in-interest through legally recognised modes will become the rightful owners of the property on such purchase.

As regards the pattas granted under the A.P. (Andhra Area) Estates Abolition Act, 1948, the A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, the Hyderabad Abolition of Inams Act, 1955, and the Hyderabad Jagir Abolition Act, the pattadars (persons in whose favour pattas are granted by way of regrant)/occupancy right certificate holders and their successors-in-interest, hold title. Title will be divested from them in the event of transfer of these properties through legally recognised modes. In case of persons claiming rights under the Hyderabad Tenancy and Agricultural Lands Act, 1950, protected tenants and land holders on whom ownership rights are conferred hold title to the lands over which such rights are conferred.

Darkhast lands: Bhashyam Ayyangar.,J, speaking for the Division Bench in The Secretary of State for India Council, represented by Changalput Vs. Kasturi Reddy traced the history of transfer of all properties from East India Company to the Crown. It is instructive to quote the relevant portion of the Judgment below:

.The law applicable to the subject is contained in the following statutes: 21 and 22 Vict. Ch.106, Ss. 39 and 40; 22 and 23 Vict. Ch. 41. Ss.1 and 2; 32 and 33 Vict. Ch.29, S.1; 33 and 34 Vict. Ch.59, Ss.1 and 2; India Act XV of 1895 (Crown grants). Ss.39 and 40 of 21 and 22 Vict. Ch. 106 vested all lands and hereditaments and other real and personal estate of the East India Company, including such as may thereafter be acquired, in the Crown, to be applied and disposed of for the purposes of the Government of India and empowered the Secretary of State in Council to sell and dispose of the same, as he may think fit, the necessary conveyance and assurances being required to be made by the authority of the Secretary of State in Council under the hands and seats of three members of the Council.

The Bench further held :

. The Crown Grants (India) Act VII of 1895 exempts Crown grants from the operation of the Transfer of Property Act (1882) and S. 17(j) and 90(d) of the Indian Registration Act (1877) exempt from registration, grants of immoveable property by Government and all documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land.

The Court also held that under Statute 22 Vict. Ch.106, all waste lands whether assessed or otherwise, are, real estate vested in the Crown, in trust for the purposes of Government of India.

All assignments under Darkhast were accordingly governed by various statutes including the Crown Grants (India) Act VII of 1895.

BSO-15 in Part-II prescribed the officers and laid down the procedure for grant of Darkhast. It envisages grant of land for occupation subject to payment of assessment. Sub-para (i) of BSO 15(2) dealing with the Scope of the Standing Order, reads:

This Standing Order applies to land at the disposal of Government other than (a) Building sites, in towns and villages (Standing Order No.21); (b) valuable relinquished land on which there are arrears of revenue (Standing Order No.33-5); (c) land sold for arrears of revenue and bought in by Government (Standing Order No.45-2); and (d) land acquired by Government for public purposes but no longer required (Standing Order No.90-32).

Under this para, lands other than the lands in occupation of registered occupants available at the disposal of the Government will be granted to the applicants under Darkhast. The following categories of lands are dealt with under this:

(i) Land prima facie available for assignment:

(a) Assessed land which is not reserved.

(b) Unassessed land which is not reserved

(ii) Land prima facie not available for assignment:

(a) Poramboke;

(b) Reserved land (assessed and unassessed).

As vast tracts of lands were available for cultivation and it was the policy of the administration to bring as much land as possible under cultivation with a view to earn revenue, and also to increase food production to overcome food shortage after the First World War (1914- 1918), the conditions of grant were liberal to the extent that there was not much distinction between the regular patta and darkhast grant. The concept of landless poor person as the eligibility criterion was not in existence. The only restriction on alienation was contained in clause (3) which reads : Alienation of the land without the sanction of the Government, to a person other than the British subject or a subject of an Indian State shall invalidate the grant. Later, certain amendments were made to the BSO. Para-23 of the BSO (1920 Edition) reads :

No land belonging to Government shall be assigned or sold under this Standing Order to any person other than a British subject or to a subject of a Native State, except by the Collector or the Board and with the previous permission of Government. Every assignment or sale made under this Standing Order shall be subject to the condition that, if the land is alienated without the sanction of Government in favour of any person other than a British subject or a subject of a Native State, the grant shall thereupon become null and void.

This condition permits the sale of land (without governments permission) in favour of two categories of persons:

Firstly, British subjects i.e., Indians belonging to British ruled States (such as Madras, Bombay, Bengal, United Provinces, Central Provinces, etc).

Secondly, subjects of native states i.e., Indians belonging to Princely States (such as Hyderabad, Mysore, Travancore, Gwalior, Patiala etc).

It is only in respect of lands assigned to depressed classes (Harijans) under the special conditions of grant in Special Form-D", that the non- alienation clause would operate and not to assignments made under general conditions of grant in Form-D", irrespective of whether such assignment was made to members of the depressed class/tribes or persons belonging to other communities. Such assignments made under the general conditions of grant are only subject to the condition that sale of such land (without permission of the Government) to persons other than British subjects/subjects of native Indian States, is prohibited.

As discussed else where, in Telangana Area, assignments were governed by Laoni Rules. A Board was constituted under the Hyderabad Board of Revenue Regulation 1358 Fasli. After formation of the State of Andhra Pradesh, the Government, acting under Section 122 of the States Reorganisation Act issued G.O.Ms.No.1270, Revenue, dated 3-7-1957 inter alia providing that the Board of Revenue functioning in Andhra Area immediately before 1-11-1957 is the competent authority to exercise functions under the Board of Hyderabad Revenue Regulation of 1358 Fasli. Thus, with effect from 1-11-1956, a unified Board of Revenue for the entire State came into being. Till 18-6- 1954 the assignments granted to landless poor persons did not contain any prohibition on alienation in Andhra area. In Telangana Area, such a provision was not incorporated till 25-7-1958.

Rulings on alienability of assigned lands:

A Division Bench of this Court in Letter Sent from Plot No.338 Vs. The Collector and District Magistrate , while dealing with the right of pattadar under Laoni Rules, 1950 framed the following Points:

1. Whether the land in question was assigned in the year 1960, 1961 in favour of the petitioners predecessors in title under the Telangana Area Land Revenue Act read with Laoni Rules made thereunder or whether the grant of patta is attributable to

Revised Assignment Policy issued in G.O.Ms.No.1406, dt. 25-7-1958?

2. Whether the provisions of Act No.9/77 can be applicable to all types of pattas under Laoni Rules after collection of market value under Chapter V of the Telangana Area Land Revenue Act?

On Point No.2, which is relevant for the present purpose, the Division Bench at paras 36 and 52 held as under :

A combined reading of the statutory provisions and the Rules as referred to would clearly indicate that grant of pattas are of two kinds; one is by way of sale in favour of persons who desirous of taking up unoccupied land. As per Rule-III of the Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958 assignment of land in favour of landless poor persons who directly engage themselves in cultivation by giving preference to Harijans, Girijans, Harijan Christians. In case of granting patta for the persons who are desirous to occupy unoccupied land made a claim for such grant of patta under Laoni Rules or under Circular 14, the same shall be transferred by way of sale as per the rules referred to above. In case of occupation of land, old occupants are entitled to grant of patta under Circular No. 14, the same shall be granted either by collecting upset price equal to 16 times the land revenue to the extent of one family holding which is an out right sale. The family holding has not been defined under Telangana Area Land Revenue Act but the same has been defined under A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950.

We are of the view that provisions of Act No.9 of 1977 will not be applicable to the cases where assignments were made on collection of market value or under Circular 14 except it were granted to the landless poor persons free of market value. Point No.2 is answered accordingly.

At para-54, The Division Bench gave the following directions:

Whenever any proceedings are to be initiated by the revenue authorities for resumption of the land, they have to specify

(a) the nature of occupancy rights granted, namely, whether occupancy rights were granted on collection of market value or free of market value in favour of the landless poor persons;

(b) whether the said land falls within the notified area restricting inalienability as per the notification issued under Section 58-A of the Telangana Area Land Revenue Act;

(c) whether Act No. 9 of 1977 applies to the nature of occupancy right/assignment granted;

(d) if any changes in the revenue records are effected, reasons for change from the original entries in khasra pahani of 1954-55 or subsequent to the same;

in the notice to be issued for enabling them to make an effective explanation to meet the contentions and submit their explanation to the action proposed. Unless such particulars are furnished for submitting an effective explanation, lands cannot be resumed merely basing upon the revenue entries so made.

While dealing with Laoni patta issued prior to 25-7-1958, in Akkem Anjaiah Vs. Deputy Collector and Tahsildar , I have held that as the assignment was granted prior issuance of G.O.Ms.No.1406, dated 25-7-1958, the initial burden lies on the Revenue officials to show that the patta did not contain a condition against alienation of the land and that unless the Revenue officials are first satisfied that the land was an assigned land within the meaning of sub-section (1) of Section 2 of Act 9 of 1977, no proceeding for cancellation of assignment for alienation of the assigned land can be initiated.

A Division Bench of this Court by order dated 23-10-2013 in W.A.No.1728/2013 confirmed the above Judgment.

In P.V. Rajendra Kumar Vs. Government of A.P. , I have held at paras 21 and 22 as under:

The term assigned land is defined by Section 2(1) of the Act to the effect that the 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 transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings. In order to attract the bar of registration, the land must be an assigned land within the above mentioned definition. Unless the patta under which the assignment is made contains a condition of non- alienability, such land cannot be treated as assigned land within the provisions of the Act.

In several Judgments, various learned Judges of this Court have taken similar views (See : K.M. Kamallula Basha and others Vs. District Collector, Chittoor District, Chittoor and others (2009(3) ALD 385), The A.P. State Electricity Board Employees Union, Madanapalli Division, Madanapalli Vs. The Joint Collector, Chittoor (W.P.Nos.19258/1998, dt.14-9-2007) and D. Parthasaradhi Sarma Vs. Government of A.P. Revenue (Assn.II) Dept, W.P.No.27217/2013, dt.15-4-2008). The above noted judgments are only illustrative of a slew of Judgments in which the above mentioned consistent view is taken by this Court. Most unfortunately, the precedential value of these Judgments is persistently being ignored by the Revenue officials as well as the Registering authorities. While on one hand the Revenue authorities, such as, Tahsildars, Revenue Divisional Officers, and in some cases even District Collectors, have been sending the lists styling them as "prohibitory lists" by including the lands which are not notified under Section 22A(2) of the Act without verifying whether the assignment was made prior to issuance of G.O.Ms. No. 1142, dated 18-6-1954, or

G.O.Ms. No. 1406, dated 25-7-1958, or that the lands were assigned on payment of market value, or assigned to political sufferers or ex- servicemen or freedom fighters, in whose cases prohibition of alienation only for a limited period of ten years is imposed, on the other hand, the Registering authorities have been refusing to receive the documents unless the party who sought to present the document produces No Objection Certificate (NOC) from the Revenue authorities. This fundamentally flawed approach of both the Revenue and the Registering authorities, has become the root cause for sprouting up of the litigation, and I am afraid, unless the flood gates are closed, there is a danger of this litigation reaching morbid proportions.

The ratio that could be culled out from the slew of authorities of this Court is that assignments made prior to issue of G.O.Ms.No.1142, dt. 18-6-1954 in Andhra Area and that were made prior to issue of G.O.Ms.No.1406, dt. 25-7-1958 in Telangana Area, did not contain prohibition on alienation that the assignees are entitled to exercise all the rights including transfer of lands; that the initial burden lies on the Government and its functionaries to show that the assignments contain a condition against alienation of the land and that unless the revenue functionaries are first satisfied that the land is an assigned land within the meaning of sub-section (1) of Section 2 of Act 9 of 1977, no proceeding for cancellation of assignment can be initiated. Waste lands: Act XXIII of 1863 deals with the manner of disposal of waste lands including unassessed waste lands. It provided for adjudication of claims to waste lands and the preamble reads as under:

Whereas it is expedient to make special provision for the speedy adjudication of claims which may be preferred to waste lands proposed to be sold or otherwise dealt with on account of Government, and of objections taken to the sale or other disposition of such lands; it is enacted as follows:

When any claim shall be preferred to any waste land proposed to be sold or otherwise dealt with on account of Government, or when any objection shall be taken to the sale or other disposition of such land, the Collector of the district in which such land is situate, or other officer performing the duties of a Collector of land revenue in such district, by whatsoever name his office is designated, shall, if the claim or objection be preferred within the period mentioned in the advertisement to be issued for the sale or other disposition of such land which period shall not be less than three months, proceed to make an enquiry into the claim or objection.

Act XXVI of 1871 defined land to mean land used for agricultural purposes, or waste land which is cultivable.

Under BSO-15, both assessed and unassessed lands are available for assignment and the lands which are classified as poramboke and reserved lands - assessed and unassessed, are not available for assignment. All arable lands are assessed. There may be cases where, after assessment of land, a ryot may have left it uncultivated for

one or more Faslies. In such cases, the lands are shown as waste in the records. However, in the RSR, the word waste is not generally used and it only contains a column whether the land is assessed or unassessed. In case of unassessed waste as assignment is permissible, the entry in revenue record describing the land as unassessed waste cannot be treated as conclusive, an assignment may have been made and not recorded or in the absence of such assignment, the same may be under the cultivation of ryots. Therefore, there cannot be a presumption that all waste lands, assessed or unassessed, continue to be vested in the Government. When a dispute in this regard arises, such disputes need to be settled based on the patta, if produced by the claimants, and in its absence, based on the relevant revenue record.

Thus, the assessed and unassessed waste lands do not fall within the expression of poramboke or reserved which are generally used for communal purposes. Para-4(ii) of BSO-15 prohibited assignment of various categories of lands. These lands are therefore vested in the Government and no one can claim right over the same unless there is evidence to show that these lands are subsequently converted into assessed waste lands and assignments have been granted. While there is a presumption that all porambokes and lands reserved for communal purposes vest in the Government, no such presumption arises in respect of waste lands, assessed or unassessed.

(b) Evidentiary value of entries in revenue record: What will be the right of a claimant over the land if he is unable to produce proof of patta;

and in such cases would the entries in the record of rights help him establish his title, are the questions to be answered under this Point.

Based on the discussion made earlier, the following record could be held to constitute the core revenue record in Andhra area prior to the integration of the revenue record of both areas : Diglot or A-Register, Ledger/Chitta constituting settlement record, No.2 Account, otherwise known as Adangal/Annual Settlement of occupation and cultivation, No.3 Account which reflects changes in respect of land held by way of transfer by sale, relinquishment etc., and the Register of Holdings maintained under BSO-31 and No.10 Account which is an individual chitta or personal ledger of each cultivator.

In Telangana area, Sethwar Register, Supplementary Sethwar, Wasool Baqui Register, Khasra Pahani (prepared under the Land Census 1954 under the provisions of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950), Pahani, Chowfasla and Faisal Patti constitute the core revenue record.

After integration of records of both the Andhra and Telangana areas, the following constitute the core relevant revenue record :

- (i) Printed Diglot or A-Register; (ii) Village Account No.1, (iii) Village Account No.2;
- (iv) No.3 Register; and (v) Village Account No.4 Register of holdings.

Case law:

Before discussing the case law on this aspect, Section 35 of the Indian Evidence Act, 1872 deserves to be noticed. It reads:

Relevancy of entry in public record or an electronic record made in performance of duty:- An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact.

The presumption envisaged under Section 6 of the 1971 Act is evidently based on the principle contained in Section 35 of the Evidence Act, 1872.

In M. Narasimha Reddy and others Vs. The Superintending Engineer, Irrigation and others this Court held at para-7 as under:

It may be noted here that Section 6 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 create a statutory presumption about the correctness of the entries in record of rights. As already noted, the petitioners names were entered in the said record of rights by the revenue authorities. Therefore, it is not open to the Government now to contend that the petitioners are not the owners of the land.

In Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and others , the Supreme Court held that Khasra is a record of right under Section 45(2) of the Central Provinces Land Revenue Act, 1917 and that the entries in the record of rights shall be presumed to be correct unless contrary is shown as per Section 80(3) of that Act. The relevant portion of the said Judgment, at para-5, reads :

The Khasra entries from 1937-38 to 1941-42 and 1943-44 to 1951-52 are all in favour of Smt. Rajrani. They show that she was in possession over the land during those years. Khasra is a record of right according to Section 45(2) of the Central Provinces Land Revenue Act, 1917. Section 80(3) of that Act provides that entries in a record of rights shall be presumed to be correct unless the contrary is shown. This provision raises a presumption of correctness of the aforesaid Khasra entries. The burden of proving adverse possession accordingly was a heavy one...

Considering the provisions of the Madhya Bharath Land Revenue and Tenancy Act, 1950, in Kasturchand Vs. Harbilash the Supreme Court reiterated the legal position on the evidentiary value of the entries in the village records. The Apex Court, at para-17, held:

As per Section 45 of the said Act, Khasra, Jamabandi or Khatoni and such other village papers as the Government may from time to time prescribe shall be annual village papers. Section 46 enjoins preparation of annual village papers each year for each village of a District in accordance with the rules made under the Act. Section 52 embodies the presumption that all entries made under that Chapter in the annual village papers shall be presumed to be correct until the contrary is proved and Section 50 prescribes the method or procedure for correction of wrong entries in the annual village papers by superior officers. Thus it is clear that in the event of wrong entries in the annual village papers the same is liable to be corrected under Section 50 and unless they are so corrected the presumption under Section 52 will govern the position.

In Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu and others , the Supreme Court described the entries in Inams Fair Register under the A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 as great acts of the State and held that the entries in the Inams Fair Register coupled with the entries in the survey and settlement record furnish unimpeachable evidence of title. In Harihar Prasad Vs. Deonarain Prasad dealing with the Bihar Tenancy Act 8 of 1885, the Supreme Court held that in view of Section 103-B(3) of the said Act, every entry in the record of rights will be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved by evidence to be incorrect and that the burden lies heavily on the person who claims to be the proprietor of the land contrary to the entries recorded in the revenue record. In State of A.P. Vs. V. Prameela Modi the Supreme Court held as under:

Supplementary sethwar issued by the Sarfekhas authorities of the erstwhile Nizam Government which was accepted by the survey and revenue authorities including the Government of A.P. constituted title and the same is legally binding on the successive governments i.e., the Government of Hyderabad and later the Government of A.P. and that this issue therefore cannot be reopened.

While the above discussed line of Judgments held in no uncertain terms that entries in the revenue records carry great evidentiary value in determining ones title and possession, there is another line of Judgments in which the Courts held that revenue records are not evidence of title and mutation proceedings before the revenue hierarchical authorities are not judicial proceedings declaring title of the parties.

While dealing with the nature of mutation proceedings, the Privy Council, in Thakur Nirman Singh and others Vs. Thakur Lal Rubra Partab Narain Singh and others held that the proceedings for mutation of names are much more in the nature of Fiscal inquiries instituted in the interest of State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with the greater confidence that the revenue for it will be paid. These observations were made by the Privy Council in a case where one Lal Bahadur Singh, one of the joint family members set up his exclusive title based on the mutation proceedings showing his name as the owner of

the land. The Privy Council held that the revenue authorities have no jurisdiction to pronounce upon the validity of the claim of Lal Bahadur Singh to be the sole proprietary owner of the estate to the exclusion of his brothers as such questions have to be adjudicated only by the competent civil court.

A Division Bench of this Court in Ramanna Vs. Samba Murthy which inter alia relied upon the Judgment in Thakur Nirman Singh (26-supra) and held :

In our view the entries in the revenue records though they may be relevant evidence under Section 35 of the Evidence Act, are not evidence of title.

Dealing with the entries in Diglot, the Division Bench held at para-10 as under :

In our view, therefore, though the entries in the Diglot register may be evidence, they are by themselves not conclusive evidence of the facts which they purport to record. It may turn out that they are in accord with the general bulk of the evidence in the case and they may supply gaps in it. When viewed in the light of other compelling circumstances from which inference contrary to such entries can be drawn, they may become unimportant and their value insignificant In State of Himachal Pradesh Vs. Keshav Ram and others , the Supreme Court held that the entries made in revenue record cannot form basis for declaration of title. In Corporation of the City of Bangalore Vs. M. Papaiah and another , the Apex Court held that it is firmly established that the revenue records are not documents of title. In Guru Amarjit Singh Vs. Rattan Chand and others , the Supreme Court held that the entries in jama bandi are not proof of title.

A Division Bench of this Court speaking through B. Sudershan Reddy., J (as his Lordship then was) made a thorough analysis of the provisions of 1317 Fasli Act and 1358 Fasli Act in Union of India, represented by its Secretary Vs. Vasavi Coop. Housing Society Ltd. and others . While dealing with a Civil Appeal filed under Section 96 CPC against the Judgment and decree of the trial Court, the Division Bench placed heavy reliance on sethwar prepared under the provisions of the 1358 Fasli Regulation. It has analysed the Judgments in Corporation of the city of Bangalore (29-supra), Guru Amarjit Singh Vs. Rattan Chand (30-supra), State of Himachal Pradesh Vs. Keshav Ram (28-supra), Nagar Palika Vs. Jagat Singh and Ramanna Vs. Samba Murthy (27-supra), Ch.S. Hanumantha Rao vs. R. Sainath and Sajana Granites Vs. Manduva and distinguished the said Judgments with reference to the ROR prepared under the 1358 Fasli Regulation. It is instructive to refer to para-76 of the Judgment hereunder :

We are required to notice that in none of the judgments referred to hereinabove, there is any reference to any of the statutory provisions under which the revenue records referred to therein viz., the Revenue Registers/Settlement Registers/Jamabandi Registers are maintained. There is no indication as to whether

those registers or records were maintained under any statute. It is not even clear as to whether those documents were maintained by any statutory authority in discharge of its normal official duties. The nature of the documents and the entries made therein are not dealt with in any one of those judgments.

By placing reliance upon the Judgments in Rajeswararao Vs. Narsingarao , Mylaram Lachaiah Vs. Nafeezunnisa Begum , Md. Ibrahim Vs. Secretary to Government of India , Commissioner of Survey Vs. G. Padmavathi , Choote Khan Vs. Mal Khan , B.S.V. Temple Vs. P. Krishna Murthy , Avadh Kishore Vs. Ram Gopal and Kasturchand Vs. Harbilash , the Division Bench held at paras 97 and 98 as under :

A careful analysis of the decisions referred to hereinabove of this court as well as of the Apex Court would make it clear that the entries made in the Record of Rights carry with them a very great evidentiary value, provided the Record of Rights is prepared and maintained under the provisions of the relevant statutes or the Regulations, as the case may be, and further provided that the entries therein are made after holding public enquiries. Sometimes, they constitute the only evidence available in order to establish ones title to the lands. The entries made in Columns 1 to 19 of the pahani patrikas shall be deemed to be the record of Rights prepared and maintained by a public servant in discharge of his official duties.

However, the Andhra Pradesh (Telangana Area) Record of Rights in Land Regulation, 1358 Fasli and all standing orders made thereunder relating to the record of rights of land as in force in the State have been repealed under Section 13 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short the 1971 Act). In the instant case, we are not concerned with the pahanies, if any, prepared and the nature of the entries made in such pahanies after the repealing of 1358 Fasli Regulations. The entries in Ex.A-6 sesala pahani of 1955- 58, Ex.A-8 pahani for the year 1972-73 and Ex.A-81 pahani for the year 1980-81 were made, prepared and maintained under the regulations since the 1971 Act has not been implemented in Secunderabad Taluq of Hyderabad District in which the lands in question are situated. (Emphasis added) The Judgment of the Division Bench was carried in Civil Appeal No.4702/2004. The Supreme Court, vide its recent Judgment dated 7-1-2004 has reversed the said Judgment in Union of India Vs. Vasavi Coop. Housing Society Ltd (31-supra). The Apex Court laid emphasis on its Judgment in State of H.P. Vs. Keshav Ram (28-supra), Corporation of the City of Bangalore (29-supra), Guru Amarjit Singh Vs. Rattan Chand (30-supra), and did not agree with the view of the Division Bench that Ex.A-3-sethwar constituted title. In paras 19 and 20 of the Judgment, their Lordships held as under :

We notice that the above principle laid down by this Court sought to be distinguished by the High Court on the ground that none of the above-mentioned judgments, there is any reference to any statutory provisions under which revenue records referred therein, namely, revenue register, settlement register, jamabandi registers are

maintained. The High Court took the view that Ext.A-3 has evidentiary value since the same has been prepared on the basis of Hyderabad record of Rights in Land Regulation, 1358 Fasli. It was also noticed that column 1 to 19 of Pahani Patrika is nothing but record of rights and the entries in column 1 to 19 in Pahani Patrika shall be deemed to be entries made and maintained under Regulations.

We are of the view that even if the entries in the Record of Rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question. Ext.X-1 is Classer Register of 1347 which according to the trial court, speaks of the ownership of the plaintiffs vendors property. We are of the view that these entries, as such, would not confer any title. Plaintiffs have to show, independent of those entries, that the plaintiffs predecessors had title over the property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11.12.1939 of their predecessor in interest, wherein, admittedly, the suit land in question has not been mentioned. (Emphasis added) On a careful reading of the Judgment of the Apex Court in Union of India Vs. Vasavi Coop. Housing Society Ltd. , I am of the opinion that the legal position as enunciated by the Division Bench with respect to the evidentiary value to be given to the record of rights has not been disturbed by the Supreme Court. While overturning the decision of the Division Bench, the Supreme Court has proceeded on the premise that even if the entries in the record of rights carry evidentiary value, the plaintiffs title could not be declared solely based on Classer Register of 1347. The Supreme Court observed that independent of the entries in the Classer Register, the plaintiff has to show that his predecessors had title over the property in question and that it is that property which the plaintiffs have purchased. The Supreme Court observed that except the registered family settlement and partition deed dated 11-12-1939 of their predecessors in interest, wherein, admittedly, the suit land in question has not been mentioned, in the absence of any independent evidence dehors the entries in the Classer Register, the plaintiffs failed to establish their title. This Judgment therefore cannot be understood as laying down any law different from that laid down by the long line of Judgments discussed above holding that the entries in the revenue records carry high evidentiary value in deciding ones title.

It is noticeable from all the Judgments which held that revenue records do not constitute title that not much reasoning supported this conclusion. However, on a close analysis of the background in which the registers were prepared and the entries were made, two reasons appear to constitute the basis for this dicta. First, the properties may change hands from person to person from time to time. There may be lapse on the part of the persons who maintain the record in updating the transactions. A person to whom the land is lawfully conveyed cannot be denied title only on the basis of absence of entries to this effect in the revenue records. Second, there may be unscrupulous revenue officials at village and taluk levels who, in collusion with private individuals may manipulate entries.

From the lengthy discussion on the land tenures undertaken hereinbefore, it could be deduced that the genesis of ones title is traceable to his possession. A registered occupant of the land, both under the ryotwari tenure and also under the estates, is recognised as a person holding rights over the land. Subject to payment of land revenue till the land is transferred to another person, a registered occupant was conferred with the right of selling the land to any third party without restrictions.

Thus, the recognised possession can be said to be the source of a persons title. The possession of a person is reflected in the records. As noticed earlier, the A-Register/Diglot in Madras Presidency and the Sethwar in Telangana Area was the mother of all the Registers. Though the primary intention of preparing this Register was to classify the lands according to the soil and potentiality and assess the revenue, recording the names of the persons in occupation was an equally important object in preparing this Register, for, without recording the names of the persons in occupation, the Government will not be able to collect revenue. All the revenue records such as Registers A to E and monthly and annual Accounts No.1 to 4 and No.10 Accounts in Andhra area and Wasool Baqui, Khasra Pahani, Pahani Patrik, Choufasla, Faisal patti etc., discussed hereinbefore, in Telangana Area are based on the basic register of Diglot/Sethwar. Therefore, if a persons name is recorded as an occupant or pattadar in these records, a necessary presumption would arise in his favour or in favour of the persons who claim through him that he holds title to the land. In case of a dispute between two private parties, this presumption can be rebutted by the rival claimant by producing better evidence, such as subsequent partitions, mutation in the revenue record and registered sale transactions etc. In many cases, after preparation of Diglot/Sethwar, changes in ownership of land may occur. In such cases, a person who sets up rival claim must be able to show that either he or his predecessor-in-title derived right through sale deeds supported by entries in revenue record.

Conclusion on Point No.1(a) & (b):

(i) A patta granted under BSO-27 constitutes absolute title.

(ii) An assignment made under BSO-15 prior to 18-6-1954 in Andhra Area and a patta granted under the Laoni Rules before 25-7-1958 in Telangana Area confer absolute title on the assignee with right to transfer the land. Unless the Revenue functionaries are first satisfied that the land is an assigned land within the meaning of sub-section (1) of Section 2 of Act 9 of 1977, no proceeding for cancellation of assignment can be initiated.

(iii) In case of Laoni pattas granted on collection of market value, the pattadar is entitled to sell the land without any restrictions.

(iv) In respect of estate and inam lands, ryotwari pattas/occupancy rights certificates constitute title. In case of protected tenants under the Hyderabad Tenancy and Agricultural Act 1950, the protected tenants having ownership certificates hold absolute title.

(v) In the absence of patta, revenue records form basis for determining title. A-Register/Diglot and Ledger/Chitta in Andhra Area and Sethwar, Supplementary Sethwar and Wasool Baqui in Telangana Area are the basic settlement record which provide basis for subsequent entries in the Village Accounts. Before integration of revenue record, No.1 and No.2 Accounts (old), No.3 Account, No.10 Account and Register of Holdings in Andhra Area and Pahani patrika, Chowfasla, Faisal Patti and Khasra Pahani in Telangana Area are relevant Village Accounts for determination of

title. After integration of the Village Accounts under the 1971 Act, (i) Printed Diglot or A-Register, (ii) Village Account No.1, (iii) Village Account No.2, (iv) No.3 Register and (v) Village Account No.4 Register of Holdings constitute relevant record.

(vi) Between two rival claimants relying upon the entries in revenue record, the person whose name is recorded in the basic records such as A-Register and Record of Holdings and their successors-in-interest will be considered as the rightful owners.

In deciding such disputes, the revenue authorities and the courts need to carefully weigh the evidence relied upon by the rival parties with reference to the record referred to hereinbefore. Even in cases of disputes between the Government and private persons, the above referred record constitute material evidence in determination of title.

(vii) While there is a presumption that all poramboke and communal lands vest in the Government, no such presumption arises in case of waste lands, assessed or unassessed. In deciding the claim of persons on these lands, isolated entries in documents such as RSR are not conclusive. All other relevant revenue record shall be considered while deciding this dispute.

Re Point No.2: In the absence of proof of patta, the right of a person in possession supported by multiple registered sale transactions needs to be considered. Both under the ancient Hindu and Muhammadan laws, the land was not vested in the King. Possession has always played an important part in all systems of jurisprudence . Under the Hindu system, possession, however brief, is necessary for a perfected title. As between title and possession, the former predominates, unless the latter is hereditary. A person who claims under title must, when it is disputed, prove it. Just in some way title can be acquired by possession, it can be lost by adverse possession of another and the effect of such adverse possession is that the latter keeps the property as his own. Possession lawfully obtained, prima facie, raises a presumption of ownership in the absence of evidence rebutting such presumption. Possession, however short, will raise that presumption and a long possession is not only evidence of title but is a good and valid title by itself. A person in possession, without title, has a right to remain in possession against all, but the true owner, and has an interest capable of being inherited, devised or conveyed.

According to Salmond, in the whole range of legal theory, there is no conception more difficult than that of possession. He observed :

The legal consequences which flow from the acquisition and loss of possession are many and serious. Possession, for example, is evidence of ownership; the possessor of a thing is presumed to be the owner of it, and may put all other claimants to proof of their title. Long possession is a sufficient title even to property which belonged to another. The transfer of possession is one of the chief methods of transferring ownership. The first possession of a thing which as yet belongs to no one is a good title of right. Even in respect of property already owned, the wrongful possession of it is a good title for the wrong doer as against all the work except the true owner.

On the relationship between possession and ownership, he said :

It (possession) is in fact what ownership is in right. Possession is the de facto exercise of a claim; ownership is the de jure recognition of one . Possession therefore is the de facto counterpart of ownership. Possession without ownership is the body of fact, uninformed by the spirit of right which usually accompanies it. Ownership without possession is right, unaccompanied by that environment of fact in which it normally realises itself.

The Courts in modern India have also recognised the right of the first occupant to the possession of the land under the Hindu law. According to what may be termed the Hindu common law, a right to take possession of land is acquired by the first person who makes a beneficial use of the soil. The interest of the person thus taking possession is not a limited but an absolute one (See: Secretary of State Vs. Vira Rayan). Subject to payment of revenue, a ryotwari proprietor enjoys an absolute proprietorship over the soil and can deal with and use it in any manner he likes . Possession is therefore recognised as nine points in law with the ownership completing the residue.

Para-7 of BSO-31 recognised possession of a person without title for 12 years or more and enjoins on the Revenue officers to recognise such persons right by transferring the register in his name after notice. Under this provision, obligation is cast on the officers to confer such right on their own motion even without an application by the individual.

In Rama Iyyangar Vs. Kasinivenda Iyyangar , a Division Bench of Madras High Court held that transactions by a party dealing with the property to which he lays a claim are important evidence of his title and some times they constitute the only evidence available.

In Syed. Md. Muzaffaralmusavi Vs. Bibi Jabeda Khatun , the Privy Council held that where no actual proof of title is forthcoming, presumption of lawful title is necessary to support possessory rights enjoyed for long. The Privy Council further held that the longer the period within which and the remoter the time when first a grant might be reasonably supposed to have occurred the less force is there is in an objection to the lawful title.

Delving into the nature of proof required in suits for declaration of title against the Government, in R. Hanumaiah Vs. State of Karnataka , the Supreme Court observed that all lands which are not the property of any person or which are not vested in a local authority belong to the Government; that all unoccupied lands are the property of the Government unless any person can establish his right or title to any such land. Taking judicial notice of collusion between private citizens with Government servants in getting their names entered in the revenue record as occupants of government

land, the Apex Court held that only entries based on appropriate documents like grants, title deeds, etc., or based upon actual verification of physical possession by an authority authorised to recognise such possession and make appropriate entries can be used against the Government. The Court further held that in the case of claim for adverse possession, the Court must examine whether the plaintiff has established his adverse possession to the knowledge of the Government for a period of more than 30 years so as to convert his possession into title and that as 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.

In this context, Section 2 of the 1905 Act is relevant. As per this provision, the lands held by persons under ryotwari tenure and land held by other registered holders under proprietary right are two of the exclusions in the said provision and these two categories of lands do not belong to the Government.

Conclusion on Point No.2:

From what is discussed above, it appears to me that in the absence of a document such as patta or a grant, a person in possession of land for 12 years or more without title can claim transfer of registry in his favour as envisaged by para-7 of BSO-31. The possession of a person coupled with multiple sale transactions would also form basis for his claim to title. In such cases, the burden shifts to the rival claimant, be it a private citizen or the Government, to prove that the land belongs to or vested in them. In many cases, despite successive registered sale transactions, the Government denies title set up by private citizens. In these cases, the burden on the Government is heavier, for, the presumption goes in favour of the person who claims the land on the strength of registered sale transactions which constitute public notice, as held by the Supreme Court in Suraj Lamp & Industries (P) Ltd. Vs. State of Haryana .

In cases of repeated sale transactions over a number of years, a presumption arises that since the land is not vested in the Government, the same is permitted to be sold. Such a presumption can only be displaced by the Government with reference to the evidence proving that the land is vested in it.

Re Point No.3:

I. (a) Description as Government land in RSR: With regard to ryotwari lands, duration of settlement was generally restricted to 30 years. Therefore, the need for resettlement arose on the expiry of the period of settlement. For undertaking resettlement, resurvey was necessary in order to demarcate the fields with specific boundaries as many changes may have occurred during the currency of the previous settlements. After completion of re-survey and re-settlement, RSRs are prepared. A

comparison of the Survey and Settlement Register (A- Register/Diglot/Sethwar) with the Re-survey and Resettlement Register is necessary for proper appreciation. It needs to be noted in this context that the proformas of RSRs for different Districts varied in their columns. For instance, column No.14 of the RSR of Pottur village, Guntur Taluk, Guntur District, pertains to the Name of pattadar or Manager of the institution to which it belongs. In contrast, in the RSR of Thimmarajupeta village of Vizagapatnam District, there is no such column. It is noticed from this RSR that the names of the individuals are mentioned in the Remarks column. For better appreciation, the A- Register/Diglot and the RSRs of Guntur and Vizagapatnam Districts are extracted below:

A-Register/Diglot of Adivivaram village of Vizianagaram Estate: Survey Number and letter Jirayiti or Inam Dry, Wet or Poramboke Source of irrigation Extent Rate per Assessment acre Acres Cts Rs. A. Rs. A. Number and name of pattadar or name of inamdar or the manager of the institution to which the land belongs and the No. of the Inam title-

deed, if any Remarks 5 6 7 Re-Survey and Re-Settlement Register (RSR) of Pottur village, Guntur Taluk, Guntur District :

R e

-

survey Number Letter Direction Old Sy.

No .

and letter, if any Government or Inam Dry, Wet or Poramboke Source of irrigation Single or Double crop Class and sort of soil Taram Rate per acre Extent Ac. cts.

Assess-

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Rs. A.
Name
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Re-Survey and Re-Settlement Register (RSR) of Timmarajupeta, No.3 Sarvasiddhi
Taluk, Vizagapatnam District:

Re

-

survey Number Sub

-

division Old survey number and letter Government

-G or Inam-

I Dry-

D, mana vari-

M, wet-

W, or poramboke-P, Source of irrigation If double crop, rate of composition
Class and sort of soil Class and sort of soil Rate per acre Extent As

s e s s m e n t Re ma rks A perusal of the columns of A-Register/Diglot and the RSRs would show that broadly both the registers contain similar columns except a few additional columns in the RSR register e.g., column pertaining to old survey number and letter. One significant column for comparison between these two registers is the column relating to tenure of the land. In the A-Register, column No.2 reads Jirayati or Inam. The equivalent column in RSR is column No.5 (In some proformas it is column No.4). It reads Government or Inam. The consistent stand of the Government which has become rather well-known over years is that if column No.4 or 5 in RSR shows the land as belonging to Government, unless the name of the pattadar is mentioned in column No.13 or 14 devoted to Name of pattadar or Inamdar or the Manager of the Institution to which the land belongs the land is deemed to belong to the Government. This assumption, in the opinion of this Court, is wholly misconceived.

In this context, it is necessary to have a peep into the background leading to the genesis of survey. The British India has enacted Act 28 of 1860 for survey and demarcation of the lands. Its long title reads An Act for the establishment and maintenance of Boundary marks and for facilitating the settlement of Boundary disputes in the Presidency of Fort St. George; Passed on 29th June 1860. The preamble of the Act reads:

Whereas it is desirable, with a view to the better definition and security of landed property, the prevention of encroachments and disputes, and the identification of lands assessed to, or exempted from, the public revenue in the Presidency of Fort St. George, that provision should be made for the establishment and maintenance of permanent villages, and for facilitating the settlement of boundary disputes and claims;

Section 2 of the said Act discloses the main purpose of survey and demarcation, namely, to facilitate the Collector if he is of the opinion that demarcation is necessary for prevention or adjustment of disputes (or for conducting and perpetuating a survey or a settlement of land revenue), to fix the boundaries of fields, holdings, estates or villages etc. The Act does not define the phrases owner and occupant. Act 28/1860 was replaced by Act 4/1897. This Act was repealed by the provisions of the Madras Survey and Boundaries Act 1923, which on the formation of the State of Andhra Pradesh, included the Telangana Area, by Section 3 of the A.P. Survey and Boundaries (Extension and Amendment) Act 1958. A reading of the statement of objects and reasons of this Act would show that the majority of the general surveys was completed and the Act was largely required in connection with survey of estates or other similar areas, re-surveys, maintenance and the like. It is significant to note that what was implicit in Act 28/1860 and Act 4/1897 have been made explicit in respect of the definitions of the words such as estate, Government land, proprietor, registered holder etc. Section 3(i) defined estate as under :

Estate means:

- (a) any permanently-settled estate whether a Zamindari Jaghir, mitta or palaiyam;
- (b) any portion of such permanently-settled estate which has been separately registered in the office of the Collector;
- (c) any unsettled palaiyam or Jaghir;
- (d) any inam village of which the grant was made or has been confirmed by the British Government;
- (e) any portion, consisting of one or more villages of any of the estates specified above in Clauses (a), (b) and (c) which is held on a permanent under-tenure.

Under Section 3(ii), Government land is defined as any land not forming an estate or any portion thereof. Under sub-section (iv), proprietor is defined as any person in whose name any estate is for the time being registered in the office of the Collector of the district within the estate situated, and, in respect of an estate specified in Clause (e) of sub-section (i) the holder thereof. Under sub-section (v), registered holder is defined as the person in whose name the land in question is registered in the Government accounts of the village: Provided that when any person other than the registered holder is in lawful management of the Government land otherwise than as agents or servant of the registered holder or as mortgagor or lessee such person shall be deemed to be the registered holder in respect of such Government land.

The above noted definitions would reveal that an estate included all permanently settled lands of whatever name i.e., Zamindari, Jagir, Mitta, Palaiyam and all Inam villages of which grant was made or was confirmed by the British Government. All the other lands are treated as Government land under Section 3(ii). The estate holders are recognised as proprietors while persons who are in occupation of Government lands and registered as such in the Government accounts of the village are called registered holders.

What is discernible from these provisions is that all lands other than estate lands are treated as Government lands irrespective of whether they were in occupation of ryots and whether pattas were granted to them or not. In other words, Jirayati land as mentioned in Column No.2 of A-Register/Diglot/Sethwar is termed as Government land in the RSR. It would therefore be a travesty of reality if the Government assumes that by mere description of the land as Government or Sarkari in column Nos.4 or 5, as the case may be, in the RSR, the land belongs to and vested in it. If the literal meaning of the phrase Government land is to be ascribed to the said column, then, the column pertaining to Name of pattadar or inamdar would be rendered nugatory. The correct way of understanding the term Government land in the RSR is that it takes into its sweep all lands including patta lands and those in possession of private persons other than the inam lands. If the pattadar column shows the names of pattadars they are private lands belonging to the persons named therein or their successors in interest.

(b) Dots in RSR: This is another important aspect which is quite often troubling the Courts and litigant public alike for several years. In many cases under ryotwari tenure, the column pertaining to pattadar/inamdar is left blank or it contains dots. The statutory enactments such as Act 28/1860, 4/1897 and 8/1923 were made with the main purpose of demarcating the boundaries between estate lands and non-estate lands which are otherwise termed as Government lands. Another purpose was to cause survey for making settlement or re-settlement, as the case may be, with regard to ryotwari lands. That the RSR is not principally meant to be a document of title is clear from the fact of absence of Pattadar column in some of the Districts (e.g. Vizagapatnam (supra)). The Government is not coming out with any explanation for keeping the Pattadar column (wherever such column exists) blank or leaving dots. In the absence of reasons assigned by the Government, this Court can visualise three reasons for this; firstly, the information as to the persons in actual occupation of the lands may not have been available with the survey personnel involved in the preparation of RSRs. Secondly, the persons in occupation of the lands may have left the village temporarily at the time of conducting the re-survey; and thirdly, the RSR not being meant to be a document of title not much importance is given either in providing a column for pattadar or in filling the column wherever it exists. Therefore, based on such an unfilled and incomplete document, it is neither proper nor reasonable to presume that the land is not held by the pattadar or that the same is not in occupation of a ryot and that the same is vested in the Government.

It is significant to notice in some of the RSRs filed before this Court that in respect of some of the lands where dots are shown under pattadar column, in the remarks column, they are shown as Hill-stream (vagu), Footpath (donka), Jungle (adavi). In such cases, the burden lies on the persons who claim ownership over lands to prove that these entries are wrong and that they are ryoti lands under their cultivation. For this purpose, they can rely upon the record such as Diglot, Register of Holdings and the Village accounts prepared after re-survey and re-settlement. Such evidence will displace the entries in the RSR.

Interestingly, in the RSR prepared for Bandaganipalli village, Udaygiri taluq, Nellore District, the pattadar column in respect of many survey numbers was filled with dots. Some of these lands are shown as dry or wet or poramboke indicating its taram and the land revenue is assessed. The Remarks column is kept blank. So where the lands are properly assessed, it raises a presumption that they are in occupation of ryots, whether holding patta or otherwise. In my opinion, keeping the pattadar column blank or showing dots is an indication that no information is forthcoming on the details of pattadar or person in occupation. In a given case, if patta was granted to the person in occupation and his name is not shown in the pattadar column, can such land be treated as belonging to the Government? The answer must be in the negative. Proof of a patta will displace the initial presumption that the land is not held by a private person. In the absence of patta, the subsequent entries in the revenue record and registered sale transactions also displace such presumption. The State being the author and custodian of the RSRs, the burden lies on it to explain why the pattadar column is not filled up and the reasons therefor are not indicated in the Remarks column.

It is apt to note that Section 10 of the 1923 Act envisages enquiry if any registered holder of the land raises dispute regarding boundary. Section 12 provides for appeal to the party aggrieved by the decision of the Survey Officer on the determination of the boundary. Section 14 provides for further

remedy to the aggrieved party of a civil suit within three years of determination of the boundary dispute. The said Act neither provides for any remedy to question the correctness of the entries nor does it envisage presumption as to the correctness of entries unlike Section 6 of the 1971 Act. These provisions would thus indicate without any cavil of doubt that the RSR is not intended to be a document of title and the same cannot be treated as a stand alone document in determination of ownership/title.

(c) Case law: In several Judgments, this Court held that entries in RSR cannot be taken as conclusive proof in determining the ownership of lands. In *P. Suresh Vs. State of A.P.* while dealing with a case pertaining to refusal of registration of a document only on the basis of entry in the RSR showing the land as belonging to the Government, this Court held that the entries made in the RSR in the year 1909 without taking into consideration the evidence for the subsequent period such as registered sale transactions cannot be taken as conclusive proof of ownership. In *Shaik Ali Vs. District Collector* this Court has referred to and relied upon various other Judgments of this Court in reiterating the position that the mere entries in RSR will not offer conclusive proof of ownership of the land. In *Shaik Dudekula Pyari Jan Vs. Revenue Divisional Officer* this Court has weighed the entries in the RSR of Doddipalli village showing the lands as Government lands on the one side and registered transactions of the years 1938, 1942, 1959 and 1972 on the other side and held that in the face of the subsequent registered sale transactions, it is for the Government to assert and prove its title if it chooses to do so in a properly constituted proceeding before the appropriate forum in accordance with law and that without doing so it is not open to the revenue authorities or the registration authorities to deny persons claiming rights over such land merely on the basis of the RSR entries. This dicta was reiterated by this Court in *Madiga Papanna Vs. State of A.P.* Conclusion on Point No.3-I(a) and (b) The inevitable conclusions that can be drawn from the above discussion are :

(a) RSR is not a stand alone document and entries therein cannot be taken as conclusive proof to determine title. It constitutes one of the many revenue records which have to be considered in determination of title.

(b) Entries in RSR showing the land as belonging to Government do not necessarily mean that the same is not a patta land, but they only mean that it is not an inam land.

(c) The pattadar column in RSR left blank or containing dots cannot be understood to mean that the land is vested in the Government. A private person can still claim ownership over the land based on the patta and/or entries in the revenue record prepared both prior to and after the commencement of the 1971 Act, besides registered sale transactions. If, the Government disputes such entries, it needs to get its right declared by instituting proceedings before the competent court of law.

II. Entries in Town Survey Land Register (TSLR): Detailed Town Survey was carried out in some municipalities and Panchayats in Andhra Area. In Telangana region detailed Town Survey of the twin cities was carried out in 1966-70. The object of undertaking detailed surveys is not only to survey the boundary between the streets and private properties, but also the boundaries of all

private properties whether built up or vacant, Government lands and Municipality lands . The system of survey held is quite different from the system followed in respect of villages containing open lands. The nature and scope of entries in TSLR fell for consideration of a Division Bench of this Court in W.A.Nos.115 and 160 of 2000. P.Venkatramam Reddy.,J (as his Lordship then was) while speaking for the Division Bench held that entries in TSLR are no doubt relevant, but they are not conclusive; that TSLR cannot be regarded as the sole guiding factor while dealing with applications for building permissions; and that TSLRs have to be considered in conjunction with other documents which the applicant would like to place reliance upon.

B. Sudershan Reddy.,J (as his Lordship then was), considered the scheme of the A.P. Survey and Boundaries Act, 1923 in Hyderabad Potteries Pvt. Ltd. (2-supra) and held that the survey made under the said Act is mainly intended for the purposes of identification of lands and fixation of boundaries and that there is no provision thereunder to make any detailed enquiries with regard to the right, title and interest of persons in the lands. It is apposite to quote the relevant passage in the said Judgment (para-21):

A bare reading of scheme of the A.P. Survey and Boundaries Act, 1923 would make it clear that the survey made under the said Act is mainly intended for the purposes of identification of the lands and fixation of boundaries. There is no provision under the Act intending to make any detailed enquiries with regard to the right, title and interest of the persons in the lands. It is neither the object nor the scheme of the said Act. There is no presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of A.P. Record of Rights in Land and Pattadar Passbooks Act, 1971. It is not a record of right. There is no such provision in the Andhra Pradesh Survey and Boundaries Act, 1923 (Emphasis added) The dispute raised in Hyderabad Potteries Pvt. Ltd. (2-supra) again arose, albeit, in a different context in State of A.P. Vs. Hyderabad Potteries Pvt. Ltd . Interestingly, in respect of the same land which was the subject matter before this Court in the said case, proceedings under the A.P. Land Grabbing (Prohibition) Act, 1982 were initiated for eviction of Hyderabad Potteries Pvt. Ltd. in respect of 17,786.56 sq. mts of land in T.S.No.4/2, Block-D Ward No.66 of Bakaram village, Musheerabad Mandal, Hyderabad District, after declaring that they are land grabbers and for award of compensation to the State. The only basis for institution of the said proceedings was that in the Town Survey conducted in respect of Bakaram and Gaganmahal villages for the years 1355 and 1357 Faslies (1945 and 1947 respectively) and further in the year 1965 and 1971, it was found that certain extent of area existing between the said two villages was left unsurveyed and that the same was not accounted for and consequently it remained as a gap area; that gap area means unsurveyed land and would be deemed to be Government land. In the Gazette notification dated 17-7-1996 published under the A.P. Survey and Boundaries Act, 1923, in column No.20 of the TSLR, the schedule property admeasuring 19,214 sq. mts. was recorded as Government land. The State has pleaded that as the survey has attained finality, Hyderabad Potteries Pvt. Ltd. should be declared as land grabbers. On consideration of the evidence, the Special

Court, by majority, dismissed the application filed by the State, but one of its Revenue Members, gave dissenting Judgment upholding the claim of the State only on the basis of the entries available in the TSLR. The State filed W.P.No.4432/2005 in this Court. The Division Bench upheld the majority view of the Special Court and dismissed the Writ Petition. The State filed Civil Appeal with the leave of the Supreme Court. While dismissing the Civil Appeal, the Supreme Court held at para-26 as under:

The sole basis of the appellant to claim the land was on the strength of entries made in survey records showing that the schedule property was surveyed as TS No.4/2, Ward No.66 of Bakaram village having an area of 19,214 sq. m. showing it as a gap area i.e., unsurveyed area as per the old survey records and as such it could only be declared to be government land as has been recorded in Column 20 of TSLR. Apart from the said revenue record and issuance of gazette notification as mentioned hereinabove, no other material document was filed by the appellant to show that the said land belonged only to the Government. It is trite that entry in the revenue record alone may not be sufficient as conclusive proof of title nor can be relied on for proof of establishing the title as such. (Emphasis supplied) Conclusion on Point No.3-II: The above judicial pronouncements thus placed the controversy beyond any pale of doubt that the entry in the TSLR does not constitute conclusive proof of ones title. Re Point No.4: The issue under this point is no longer res integra. In Thummala Krishna Rao (1-supra), a serious dispute arose as to whether three plots of land were included in the acquisition notified by the Government of Nizam for establishment of Osmania University. The suit filed by the Osmania University against Nawab Habibuddin in the City Civil Court, Hyderabad for eviction was dismissed on the finding that plot No.111 was not acquired by the Government and that though plot Nos.94 and 104 were acquired, the University failed to prove its possession thereof 12 years the before filing of the suit. The appeal filed by the University was dismissed by this Court. The State Government was not impleaded as a party to those proceedings. On the Osmania University addressing a letter to the Government of Andhra Pradesh for summary eviction of the persons in occupation of the three plots, the Tahsildar initiated proceedings under the 1905 Act by issuing a notice under Section 7 thereof. It was followed by an order passed under Section 6 directing eviction of Habibuddin. The appeal filed by Habibuddin before the Collector was dismissed and the said order was affirmed by the Board of Revenue. During the pendency of the appeal before the Board of Revenue, the plots were purchased by the respondents before the Supreme Court for a valuable consideration. After being unsuccessful before the Government against the order of the Board of Revenue, the purchasers have filed Writ Petition in this Court. A learned single Judge dismissed the Writ Petition. The Division Bench has however allowed the Writ Appeals by taking the view that the aspect whether the land belongs to the Osmania University or not will have to be decided by a competent Civil Court as and when a civil suit is filed by the Government and that the summary eviction proceedings under Section 7 cannot be resorted to unless there is an attempt at encroachment of a very recent origin. The State carried the matter in appeal before

the Supreme Court. While affirming the Judgment of the Division Bench, the Supreme Court held :

It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government" In regard to property described in Sub-sections (1) and (2) Of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like is in unauthorised occupation of property which is declared by Section 2 to be the property of the Government and therefore it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land "for which he is liable to pay assessment under Section 3". Section 3 in turn, refers to unauthorised occupation of any land "which is the property of Government". If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belong to it and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title in the instant case, there" unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceeding taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years Sore the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated question of title. That procedure is, therefore, not the due process of law for evicting the respondents.

The view of the Division Bench that the summary remedy provided for by Section 6 cannot be resorted to unless the alleged encroachment is of "a very recent origin", cannot be stretched too far. That was also the view taken by the learned single Judge himself in another case which is reported in *Meherunnissa Begum v. State of A.P.* (1970) 1 ALT 88 which was affirmed by a Division Bench : AIR 1971 AP 382. It is not

the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law. (Emphasis added) This ratio is since being followed.

One of the Judgments which deserves a mention in this regard is that of a Division Bench of this Court in Special Deputy Collector, Land Eviction Vs. Konda Lakshman Bapuji . While referring to an earlier Judgment of this Court by O. Chinnappa Reddy.,J (as his Lordship then was) in Meharunnisa Begum Vs. State of A.P. which was also considered in Tummala Krishna Rao (1-supra), the Division Bench observed that the petitioners before it were in possession nearly for 25 years prior to the issue of the impugned notices; that the occupation of the writ petitioners is open and for an appreciable length of time as observed by the Supreme Court and the petitioner can be taken prima facie to have a bonafide claim to the property requiring an impartial adjudication according to the established procedure of law; and that the Government cannot decide such questions unilaterally in its own favour and evict them summarily on the basis of such decision. The Division Bench also made the following significant observations:

The land in possession of the writ petitioners is not a part of a public road, street, bridge or the bed of the sea and the like. Therefore we are clearly of the view that the proceedings under the A.P. Land Encroachment Act cannot be taken and no enquiry can be held by the Tahsildar and the petitioners cannot be evicted in pursuance of any such enquiry.

Conclusion on Point No.4: The settled legal position therefore emanating from the above noted Judgments is that where there is a bonafide dispute regarding title of a person over the lands other than public roads, streets, bridges or the bed of the sea, or the like, summary proceedings under the 1905 Act cannot be initiated and that in all such cases, the Government which claims title shall approach the competent Civil Court for declaring its title.

For ease of reference, conclusions on Point Nos.1 to 4 are compendiously reproduced in the addendum enclosed which shall form part of this Judgment.

PART-IV Consideration of individual Writ Petitions :

Let me now consider the Writ Petitions by applying the legal position elucidated hereinabove. For convenience, these Writ Petitions are categorised based on the nature of the dispute. W.P.Nos.23595/2013, 23599/2013, 23615/2013, 25333/2013 and 25356/2013: These writ Petitions involve dispute relating to the entries in RSRs. Of these, W.P.Nos.23595, 23599 and 23615 of 2013 present identical facts. Though the facts were already stated at the beginning, their repetition is unavoidable in order to apply the principles of law discussed above to the facts of each case.

The petitioner in W.P.No.23595/2013 pleaded that he has purchased lands admeasuring Ac.23-43 cents in Sy.No.408, Ac.2-44 in Sy.No.589, Ac.1-40 cents in Sy.No.385, Ac.1-35 cents in Sy.No.407 and Ac.2-23 cents in Sy.No.410 of Bandaganipalli village, Udaigiri Mandal, Nellore District, under registered sale deeds from Byreddy Cheera Reddy and others. The petitioner further pleaded that the names of the predecessors of the vendors of the petitioner have been entered in the RSR. The petitioner filed a copy of certificate in Rc.No.108B, dated 29-12-2008 issued by respondent No.3 wherein he has clarified that the lands in question belonged to Byreddy Cheera Reddy and others. Consequent on purchase of the lands, the petitioner has made an application to respondent No.3 (wrongly stated as respondent No.4) in the prescribed form on 3-6-2013 for grant of pattadar passbooks and title deeds. By endorsement in L.Dis.No.425/2013(F), dated 3-8-2013, respondent No.3 has rejected the petitioners application for grant of pattadar passbooks and title deeds only on the ground that as per the adangals, the lands are shown as Government lands.

In W.P.No.23599/2013, an extent of Ac.37-30 cents in Sy.No.384 of Badaganipalli village, Udaigiri Mandal, SPSR Nellore District was purchased by the petitioner from the same vendors as in W.P.No.23595/2013. In this case also, respondent No.3 has issued a certificate stating that the lands are recorded in the name of Byreddy Cheera Reddy and others. The petitioner has filed a similar certificate issued by respondent No.3 showing that the lands were recorded in the name of Byreddy Cheera Reddy and others in the Diglot. The grievance of the petitioner is that respondent No.3 has issued the impugned endorsement dated 3-8-2013 refusing to issue pattadar passbooks and title deeds on the same ground as in W.P.No.23595/2013.

The facts in W.P.No.23615/2013 are also identical except that the survey numbers and the extents of the land purchased by the petitioner herein vary. The petitioner has filed copies of RSR. Based on the entries in the RSR, respondent No.3 has issued a certificate to the effect that all the lands purchased by the petitioners stood in the name of Byreddy Cheera Reddy and others from whom the petitioner has purchased the lands under registered sale deeds.

As no counter-affidavits have been filed in these Writ Petitions (W.P.Nos.23595, 23599 and 23615/2013) by the respondents, the pleadings of the petitioners and the contents of separate certificates issued by respondent No.3 remained uncontroverted. It is therefore reasonable for this Court to proceed on the premise that the names of the petitioners vendors have been recorded in the RSR as pattadars.

As concluded under Point No.3, if any evidence contrary to the entries in RSR exist, such entries cannot be taken as conclusive proof of title. In these cases, the only document which contradicts the entries in the RSR is Adangal. As noticed by this Court earlier, under Rule 3 of the A.P. Rights in Land and Pattadar Passbooks Rules, 1989, pahani/adangal does not constitute record of rights (ROR) for a village. Under the Scheme of the 1971 Act the procedure for preparation and updating of record of rights, intimation of acquisition of rights, amendment and updating of ROR on receipt of such intimation, the provisions of appeal and revision, relate only to ROR. Therefore, even if there is an error in the entry in the Adangal, a person who asserts his title and ownership to the properties need not avail the remedies provided under this Act for rectification of entries for the simple reason that Adangal pertaining to post 1971 Act period does not form part of ROR. Consequently, the presumption of correctness of the entries as envisaged under Section 6 of the 1971 Act is not available in respect of Adangal. Therefore, if an entry in the Adangal contradicts the basic record such as Diglot or RSR, the entries in the latter documents will prevail over the entry in the Adangal. Unless any document other than Adangal which constitutes ROR showing the land as belonging to Government exists, the revenue functionaries cannot claim the land as belonging to the Government merely based on an entry in the Adangal. The purported entries in the Adangal are in the teeth of the entries in the RSR and the certificate issued by respondent No.3 himself in the year 2008 based on such entries. Therefore, on the facts of these cases, the entries in the Adangal have no legal force and are hence liable to be ignored. W.P.Nos.25333/2013 and 25356 of 2013: From the facts of these cases already noted, it could be seen that it is an admitted fact that registered sale transactions have taken place in respect of these lands from the year 1934 as admitted in the counter-affidavits of the Tahsildar, Gorantla Mandal, Anantapur District. It is also admitted that 10(1) Account incorporated the names of the petitioners. It is however stated that the said entries were made without the certification of any officers. It is also admitted that these lands were included in the declarations made by the petitioners vendors under the 1973 Act whereunder these lands were treated as private lands by the Land Reforms Tribunal. Further, in respect of these lands, pattadar passbooks and title deeds have been issued. The only ground on which these lands were treated as Government lands is that the RSR has shown that they are Government lands. The respondents have not filed a copy of the RSR. It is not known whether the RSR contains the names of pattadars or the pattadar column is kept blank or it contains dots. Following the findings rendered on Point No.3, the plea of the respondents that in view of the entries in the RSR the lands are treated as Government lands has to be termed as wholly meritless. The RSR entry cannot be taken as the sole guiding factor to

determine the title of a person. The overwhelming documentary evidence such as 10(1) Register, the proceedings of the Land Reforms Tribunal and the registered sale deeds from the year 1934 would outweigh the entries in the RSR. The issue of pattadar passbook and title deed based on the entries in the record of rights such as 10(1) Account raise a presumption in favour of these entries under Section 6 of the 1971 Act. For all these reasons, the petitioners have established their ownership for receiving compensation and there is no justification for the respondents to deny compensation.

W.P.No.15438/2012, 31582/2012, 26106/2013, 25727/2013, 27589/2013 and 23447/2013:

On broad classification, these Writ Petitions fall under one category. In all these Writ Petitions, the genesis of the dispute is the entries in TSLR. As the facts vary from case to case, each Writ Petition needs to be considered on its own facts:

W.P.No.31582/2012: Since the facts have already been noted earlier, they need not be repeated. The request of the petitioners for change of classification of the land in the TSLR from burial ground to poramboke was rejected only based on Fair Adangal prepared in the year 1968 describing the land as smasanam. The admitted facts however remain that as far back as 1901, an extent of Ac.155-00 was purchased by one Vahejullah Saheb s/o. Afizullah Saheb through registered sale deed from a private person and the same changed hands under as many as 18 sale deeds from 17-11-1931 to 20-6-1940 and further sale deeds were registered upto the year 1978. The report of the Revenue Divisional Officer revealed that in all the registered documents, the land is described as Government land. In the year 1971, the Municipal authorities have given assessment numbers to properties and allotted door numbers. Since the year 1969, the Municipal authorities have approved building plans for the subject land. The Revenue Divisional Officers report was endorsed by the District Collector in his report dated 21-3-2011. However, on a reference made by the Chief Commissioner of Land Administration (CCLA) to the Collector, Krishna District, for rectification of the facts and submission of a report, the Collector has relied upon the Fair Adangal prepared in the year 1968 describing the land as smasanam. On the report submitted by the CCLA, the Government has rejected the petitioners claim for conversion of land from burial ground to AWD. In essence, the respondents sought to treat the entries in the TSLR and the Fair Adangal as conclusive proof of the nature of the land. This, in my opinion, is a highly unsound approach. No entry in the revenue or survey record can be treated as conclusive proof if circumstances exist which render such entries as unrealistic and contrary to the ground realities. There is no dispute about the fact that the land was a part of Machavaram village estate and even before the estates were abolished, the same was merged in the then Vijayawada Municipality in the year 1943. As per the report of the Assistant Director, Survey and Land Records, the settlement records under the Estates/Inams Abolition Acts are not available for examination. No documents have been discussed based on which the

entry in the Fair Adangal describing the land as burial ground was made in the year 1968. Had the land been correctly described as burial ground it would be beyond ones comprehension as to how registered sale transactions were allowed to take place from the year 1901, and how the Vijayawada Municipality has made assessment of the properties, approved building plans and allotted door numbers. It is therefore a case where the ratio in Rama Iyyengar (50-supra) as referred to and discussed under Point No.2 squarely applies. The continuous flow of registered sale transactions reflects on the conduct of the Government in treating the land as a private land and not as a burial ground. Therefore, this is a fit case to which the doctrine of estoppel by conduct needs to be applied. The Government cannot rely upon a stand alone entry in the Fair Adangal prepared in the year 1968 by which time more than 18 registered sale transactions have taken place. Thus, ex facie, the entry in the Fair Adangal is incorrect. In my opinion, respondent No.1 ought to have accepted the earlier reports of the Revenue Divisional Officer and the District Collector. The petitioner is therefore entitled for change of classification of the land from burial ground to AWD. W.P.Nos.25727 and 26106 of 2013: The petitioners have claimed ownership of the land in respect of a common property based on a compromise decree passed in O.S.No.1420/1983. The petitioners have traced their title through their grand mother late Sultan Khatoon who has purchased an extent of 23445 sq. mtrs. of land under registered sale deed 932 of 1336 Fasli (1926). In O.S.No.1420/1983, compromise decree dated 2-12-1983, was obtained by the petitioners whereunder the property was partitioned between them. The proceedings under the 1905 Act were initiated only based on the entry in the TSLR describing the land as G-Abadi. In the counter-affidavit, the respondents have not denied the existence of registered sale deed under which the petitioners grand mother has purchased the property as far back as the year 1926.

They have also not disputed the plea of the petitioners that for almost 90 years, their family has been in possession of the property. The long standing uninterrupted possession of the petitioners family raises a reasonable presumption that the property in question is a private property and the same does not belong to the Government. Such a presumption can be displaced by the Government only in a properly constituted civil proceeding. On these undisputed facts of the case, the ratio in the Judgment of the Supreme Court in Tummala Krishna Rao (1-supra) squarely applies. The respondents cannot therefore resort to summary proceedings of eviction under the provisions of the 1905 Act as there is a bona fide dispute relating to ownership of the land. Following the dicta laid down in Tummala Krishna Rao (1-supra) and the finding rendered by this Court on Point No.4, the only option left with the respondents is to file a civil suit. The impugned proceedings are therefore liable to be quashed with liberty to the respondents to approach the competent Civil Court.

W.P.No.27589/2013: From the uncontroverted facts recorded in the earlier part of the Judgment, it is evident that the only ground on which eviction proceedings under the 1905 Act have been issued is that the land is recorded as G-Abadi in the TSLR. The respondents have not denied the genesis of the petitioners title. There are as many as four registered sale transactions commencing from 17-6-1959. The property was also the subject matter of O.S.No.555/1985 wherein a decree was

passed on 26-9-1995 in favour of Satyamma and her husband, the predecessors-in-title of the petitioners. The long standing possession of the predecessors-in-title of the petitioners, at least from the year 1959, is not disputed by the respondents. In view of the finding on Point No.4, the respondents cannot initiate eviction proceedings under the provisions of 1905 Act only based on the entry in the TSLR describing the land as G-Abadi. The impugned proceedings are liable to be quashed, however, with liberty to the respondents to approach the competent Civil Court for declaration of title of the Government over the land in question.

W.P.No.15438/2012: The petitioners have claimed title to 2300.46 sq. yards under three registered sale transactions dated 5-6-1985, 14-6-1985 and 15-11-1985. The petitioners have also relied upon the proceedings initiated under the 1973 Act in respect of the same land by order dated 30-8-1995 passed in C.C.No.7576/1975 declaring 270 sq. yards as surplus land. However, the appellate authority by order dated 20-6-1996 declared the petitioner as a non-surplus holder. The petitioner has already sold 1124 sq. yards out of the said property to a third party under registered sale deed and when the remaining property of 1176.46 sq. yards was sought to be sold, the petitioner was informed by the Sub- Registrar, Chikkadpally that the District Collector, Hyderabad by letter dated 4-7-2011 instructed the Registering authorities not to register any document on the ground that the subject property is included in the prohibitory list under Section 22-A of the 1908 Act.

On the pleadings of the respondents, it is evident that the only ground on which the land was included in the prohibitory list was that the same was recorded as G-Abadi in the TSLR. Except the TSLR entry, no other document is relied upon by the respondents to show that the land in question belongs to the Government. The fact that mutation was made in favour of the petitioners vendors is not disputed by any of the respondents. As noted above, in contrast to the TSLR entry, the petitioners have relied upon the proceedings of the Primary and Appellate Authorities under the 1976 Act whereunder the land has been treated as a private land. The fact that the petitioner was allowed to purchase the land under three registered sale deeds in the year 1985 and sell a part of the land under a separate registered sale deed later to a third party would show that despite the entry in the TSLR, the Government functionaries have treated the land as private land. In the face of these undisputed facts and having allowed the petitioner to sell 1124 sq. yards of land, the respondent cannot raise an objection for registration of the balance property solely based on the entry in the TSLR. If the subject property was included in the prohibitory list under Section 22-A of the 1908 Act based on such an entry in the TSLR, such inclusion cannot be legally sustained. Accordingly, respondent No.5 is directed to ignore the prohibitory list to the extent of the subject property and entertain the sale deed that may be presented by the petitioner for registration. However, respondent Nos.1 to 3 are left with the liberty of filing a civil suit for declaration that the property is vested in the Government. W.P.No.23447/2013: Except the TSLR entry, no other document is relied upon by the respondents on the basis of which the said entry in the TSLR has been made. The registered sale deed of as far back as 14-8- 1956 standing in favour of Dr. Fareed s/o. J.D. Italia and the registered sale deed dated 10-12-1984 under which the petitioner has purchased the property would prove the long standing possession of the property by private individuals. In view of the settled legal position that title cannot be decided solely based on TSLR entry, the plea of the respondents suffers from serious legal flaw. This case is identical to the case dealt in Hyderabad Potteries Pvt. Ltd. (2-supra) the only difference being that in that case, the land was shown as gap

area in the TSLR while in this case, the land is shown as GVM drain.

A perusal of the impugned endorsement dated 24-6-2013 shows that the petitioner has not produced any documentary evidence to prove that the classification in the TSLR is wrong. Even in this Writ Petition, the petitioner has not pleaded that other than the two registered sale deeds and the Encumbrance Certificate, any other document has been filed to show that wrong classification has been made. The Judgments dated 20-6-2012 in W.P.No.25840/2011 on which reliance has been placed by the petitioner does not help her for the reason that in that case, the petitioner therein has sought relief against the Greater Hyderabad Municipal Corporation for considering her application for grant of building permission relying on the Judgment of this Court in Hyderabad Potteries Pvt. Ltd. (2-supra). However, in this case, the petitioner sought the relief of directing the District Collector to grant NOC to enable her to obtain building permission.

While the settled legal position is that the TSLR entry is not the conclusive evidence of title, the said entry cannot be altogether discounted if there is no other evidence to show that the land is a private property. Any other relevant evidence such as revenue records, municipal records etc., other than the TSLR is necessary to displace the entry in the TSLR. In the absence of such material, it is not possible to direct respondent No.1 to grant NOC. Therefore, while setting aside the impugned endorsement, the petitioner is given liberty to approach respondent No.1 with the relevant material to show that the entry made in the TSLR is wrong. If such record is produced, respondent No.1 shall consider the same, take appropriate decision and communicate the same to the petitioner within one month from the date of the petitioner producing the material.

W.P.No.25387/2013: In this case, initially proceedings under the 1977 Act were initiated. On the petitioner approaching this Court by filing W.P.No.26061/2011 to direct respondent No.3 to consider his explanation submitted to notice dated 2-9-2011 issued in Form-1 under the 2007 Rules framed under the 1977 Act 1977, respondent No.3- Tahsildar has taken up the enquiry, wherein he was reconciled to the reality that the subject lands were not assigned lands. Therefore, while dropping the said proceedings, respondent No.3, however, strangely went to the extent of declaring that the lands in question belong to the Government.

The impugned order is liable to be set aside for two reasons. Firstly, on the finding that lands are not assigned lands, respondent No.3 has lost jurisdiction to continue the proceedings. It was incumbent upon respondent No.3 to close the proceedings initiated under the 1977 Act. Instead of doing so, he has acted beyond his jurisdiction in declaring the lands as belonging to the Government. While exercising his powers under the provisions of the 1977 Act, respondent No.3 cannot exceed his jurisdiction by adjudicating on the title over the property like a civil court. Thus, the declaration made by respondent No.3 in the impugned proceedings that the title of the land is vested in the Government is without jurisdiction. Secondly, the reasoning and the conclusion drawn by respondent No.3 that the dots in the RSR indicate that the lands belong to the Government is in the teeth of the conclusions drawn by this Court under Point No.3. Similarly, the reasoning of respondent No.3 that the classification of the land as Gayalu in the RSR is also conclusive proof of the Governments title to the lands is also legally unsound for the detailed discussion made and the findings rendered in this Judgment. Therefore, the impugned order to the extent of declaring the

land as belonging to the Government cannot be sustained and the same is set-aside. However, the question whether the land belongs to the petitioner, or the same is vested in the Government, is left open to be adjudicated by a competent court in appropriate proceedings. W.P.No.25993/2013: On the facts already noted, it is seen that the petitioners application for conversion of land from agriculture to non- agriculture was kept pending on the ground that instructions from the Government are awaited in view of recording of the land as dots and Anaadeenam punja in the village Diglot and the District Collector also has given directions to await further instructions from the Government in respect of Anaadeenam punja lands. Since no decision has been taken by the competent authority till now, it is appropriate that respondent No.3 decides the petitioners application for conversion considering the evidence that may be placed by the petitioners including the series of sale deeds commencing from 19-9-1945, without treating the entry in the Diglot/RSR as conclusive proof of the nature of the land. Respondent No.3 is also directed to follow the findings rendered in this Judgment with respect to the evidentiary value of the entries in the revenue record including the RSR and take a decision within two months from the date of receipt of this order.

In the result, W.P.Nos.23595, 23599, 23615, 25333, 25356, 25727, 26106, 27589 of 2013, 15438 and 31582 of 2012 are allowed as prayed for and W.P.Nos.23447, 25387 and 25993 of 2013 are disposed of.

As a sequel to the disposal of the Writ Petitions, WPMP Nos.29000, 29004, 29020, 31249, 31286, 31756, 32237, 36804, 34216 of 2013; 19886, 21320, 40274 of 2012; 28808, 31325 and 32114 of 2013 filed in the respective Writ Petitions for interim relief are disposed of as infructuous.

Justice C.V. Nagarjuna Reddy Date : 28-4-2014 L.R. copies AM HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY W.P.Nos.15438, 31582 of 2012; 23447, 23595, 23599, 23615, 25333, 25356, 25387, 25727, 25993, 26106, 27589 of 2013 Date : 28-4-2014 ADDENDUM (1) A patta granted under BSO-27 confers absolute title. (2) An assignment made under BSO-15 prior to 18-6-1954 in Andhra Area and a patta granted under Laoni Rules before 25-7-1958 in Telangana Area confer absolute title with right to transfer the land. Unless the Revenue functionaries are first satisfied that the land is an assigned land within the meaning of sub-section (1) of Section 2 of Act 9 of 1977, no proceeding for cancellation of assignment can be initiated.

(3) In case of Laoni pattas granted on collection of market value, the pattadar is entitled to sell the land without any restrictions. (4) In respect of estate and inam lands, ryotwari pattas/occupancy rights certificates constitute title. In case of protected tenants under the Hyderabad Tenancy and Agricultural Act 1950, the protected tenants having ownership certificates hold absolute title.

(5) In the absence of patta, revenue records form basis for determining title. A-Register/Diglot, Ledger/Chitta in Andhra Area and Sethwar, Supplementary Sethwar and Wasool Baqui in Telangana Area are the basic settlement record which provide basis for subsequent entries in the Village Accounts. Before integration of revenue record, No.1 and No.2 Accounts (old), No.3 Account, No.10 Account and Register of Holdings in Andhra Area and Pahani patrika, Chowfasla, Faisal Patti and Khasra Pahani in Telangana Area are relevant Village Accounts for determination of title. After integration of the Village Accounts under the 1971 Act, (i) Printed Diglot or A-Register,

(ii) Village Account No.1, (iii) Village Account No.2, (iv) No.3 Register and (v) Village Account No.4 Register of Holdings constitute relevant record.

(6) Between two rival claimants relying upon the entries in revenue record, the person whose name is recorded in the basic records such as A-Register and Record of Holdings and their successors-in-interest will be considered as the rightful owners. In deciding such disputes, the revenue authorities and the courts need to carefully weigh the evidence relied upon by the rival parties with reference to the record referred to hereinbefore. Even in cases of disputes between the Government and private persons, the above referred record constitute material evidence in determination of title.

(7) While there is a presumption that all porambokes and lands reserved for communal purposes vest in the Government, no such presumption arises in respect of waste lands, assessed or unassessed.

(8) A person in possession of land for 12 years or more without title can claim transfer of registry in his favour as envisaged by para-7 of BSO-31.

(9) Long possession supported by multiple registered sale transactions give rise to presumption of title. Such presumption is however rebuttable.

(10) RSR is not a stand alone document. It is one of the relevant records in determination of ownership.

(11) Description of Government land in RSR only means that it is not an inam land. It can include patta lands also.

(12) Dots or blank in pattadar column does not necessarily mean that the land is vested in or it belongs to the Government. Despite such blanks or dots, a private person can claim ownership based on entries in revenue record prepared both prior to and after the commencement of the 1971 Act, besides registered sale transactions. If the Government disputes such entries, it needs to get its right declared by instituting proceedings before the competent court of law.

(13) The entries in TSLR do not constitute conclusive proof of title. (14) Where there is a bonafide dispute regarding title of a person in possession of the lands other than public roads, streets, bridges or the bed of the sea or the like, summary proceedings under the 1905 Act cannot be initiated. In all such cases, the Government which claims title shall approach the competent Civil Court for declaration of its title.

Justice C.V. Nagarjuna Reddy Date : 28-4-2014 AM AIR 1982 S.C. 1081 2001(3) ALD 600 Land Systems of British India by B.H. Baden Powell (page-7) B.H. Baden Powell explained : (Land Systems of British India Pages 10 & 11) :

The state of these territories, when they came under British rule, was in many cases uniformly deplorable.

The districts forming the Northern Sirkars which had been under the Muhammadan dominion in its decline, had passed, as I have said, under the Zamindari system of revenue-collection, which marked the days of the fall; but the Zamindars do not seem to have been exceptionally exacting.

The districts that had been taken from Mysore were oppressively assessed, but otherwise had been kept in some order. The Mysore sultans were too careful of their treasury to allow great Zamindar agents to intercept the profits; but they left the revenue-officials or amils, and petty middlemen, to get the most out of the people they could. Haidar Ali did not object to his agents squeezing the people; for, as Colonel Wilks, in his account of Mysore, says: it was part of his system to squeeze the sponges which absorbed his peoples surplus wealth.

The Ceded Districts, however, were overrun with a class of local chiefs (to be described presently) called poligar.

In Karnul there was a tributary Nawab, and his oppressions were grievous:-

The revenue administration was in the greatest disorder, and was carried on without any system whatever. No public accounts were kept except by the village officers. The amount to be paid by each village was changed according to the caprice of the Nawab, and he would increase his demand without any ostensible reason. When his demands passed all bounds, the people would fly.

Then the Nawab would allure them back with promises, and give them a cowle (agreement of terms) to reassure them; but as soon as the crops were ready to be cut, he would seize the produce, breaking through his word without scruple.

Law in Madras Presidency by Mr. B.R. Chakravarthi It is the essential feature of a raiyatwari Settlement that every raiyat is free to hold or to relinquish whatever fields of his holding he likes, or to ask for other available numbers, provided all is done by a certain date. Hence, an account or Settlement is necessary both to see what the raiyat has actually held, and has to pay revenue for, during the year, as well as (in Madras) to determine the amount of any remissions he may, by rule, be entitled to. So it is a feature of the raiyatwari system, that besides the initial assessment of the land-revenue, there is an annual jamabandi or settling up with the cultivator, taking account of any change in his holding as shown in his patta, and noting deductions (if the system allows any) from his total payment.

(Land Systems of British India by B.H. Baden-Powell page-33) Land Systems of British India by B.H. Baden Powell (page-54) Statement of Objects and Reasons of A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948: In many estates in the Province of Madras, the rent levied by the landholder from his ryots is substantially in excess of the assessments charged by the Government on

similar land in the neighbouring ryotwari area and is beyond the capacity of the ryots to pay. The zamindari system has perpetuated an assessment which has no relation to the productive capacity of the land. It has further led to loss of contract between the Government and the actual cultivator and has acted as a brake in regard to agricultural improvement. Most of the irrigation works in estates are in a state of despair. The complexities of the zamindari system have led to an immense volume of litigation. Many of the records in the offices of zamindars are indifferently maintained and the peasantry, most of whom are illiterate, are at the mercy of unscrupulous agents. Zamindary administration has rarely, if ever, been as efficient as administration in Government areas. There is thus acute discontent among estate ryots and there has been a good deal of agitation by them. The Government are convinced that the zamindari system in force in the province has outlived its usefulness, and should be abolished at the earliest possible date.

Statement of Objects and Reasons of the A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956: The Andhra Pradesh (Andhra Area) Inams Conversion into Ryotwari) Act, 1956, mainly, provides for the abolition of all minor inams including charitable and religious service inams. In the case of inam lands in an inam village which are not held by an institution and are in occupation of tenants the tenants get ryotwari pattas for two-thirds of the lands and the inamdars for one-

third of the lands. If there are no tenants in occupation, the inamdar gets a ryotwari or zamindari village, the inamdars get the patta in respect thereof. In other words, in the case of inam village, the Act recognises the existence of occupancy rights in favour of the tenants, whereas it does not recognise the existence of such rights in the case of inam lands in the ryotwari and zamindari villages. There are however, certain inam lands in ryotwari and zamindari villages where tenants have been recognised to possess rights of permanent occupancy through custom having the force of law or by virtue of a courts decree etc. Section 4(1): In the case of an inam land in a ryotwari or zamindari village the person or institution holding such land as inamdar or the date of commencement of this Act shall be entitled to a ryotwari patta in respect thereof. (2) In the case of inam land in an inam village (a) if such a land is held by any institution on the date of commencement of this Act, such institution shall be entitled to a ryotwari patta in respect of that land; (b) if such a land is held by an inamdar other than an institution on the date of commencement of this Act, and is in his actual occupation on the said date, the tenant who is declared to be in occupation of that land on the 7th January, 1948, by the Revenue Court under sub-section (3) of Section 5, or the Collector under sub-

section (5) of that section, as the case may be, shall be entitled to a ryotwari patta for two-thirds share of that land and the inamdar shall be entitled to a ryotwari patta for the remaining one-third share thereof; and if no tenant has filed an application before the Revenue Court under sub-section (2) of that section within the period specified therein, the inamdar shall be entitled to a ryotwari patta in respect of that land; (c) if such a land is held by an inamdar other than an institution on the

date of commencement of this Act, but is in the occupation of a tenant on the said date, the tenant who is declared to be in occupation of that land on the 7th January, 1948, by the Revenue Court under sub-section (3) of Section 5, or the Collector under sub-section (5) of that section, as the case may be, shall be entitled to a ryotwari patta of two-thirds share of that land and the inamdar shall be entitled to a ryotwari patta for the remaining one-third share thereof and if no tenant has filed an application before the Revenue Court under sub-section (2) of that section within the period specified therein the tenant in occupation of the land on the date of commencement of this Act, shall be entitled to a ryotwari patta for two-thirds share of that land and the inamdar shall be entitled to a ryotwari patta for the remaining one-third share thereof.

(3) The one-third share of the inam land in occupation of the tenant in respect of which the inamdar is entitled to a ryotwari patta under clause (b) or clause (c) of sub-section (2) shall be deemed to be the compensation payable to the inamdar in lieu of the extinguishment of his rights in the two-thirds share of such land.

1972(1) ALT 270 Page-55 of Hand Book of Land Records by Mr. P. Kasturi Reddy Page-56 of Hand Book of Land Records by Mr. P. Kasthuri Reddy Page-58 of Hand Book of Land Records by Mr. P. Kasthuri Reddy AIR 1976 A.P. 19 (1902) 1 MLJ 453 2008(5) ALT 313 (DB) 2011(5) ALT 420 2011(3) ALD 571 (2000(3) ALT 295) AIR 1974 S.C. 1178 AIR 2000 S.C. 3037 = 2000(7) SCC 611, (1991) Supp. (2) SCC 228 AIR 1956 S.C. 305 (2006) 13 SCC 147 AIR 1926 P.C. 100 AIR 1961 A.P.361 1996(11) SCC 257 1989(3) SCC 612 1993(4) SCC 349 2002(5) ALT 370 (DB) 1995) 3 SCC 426 1999(5) ALD 309 2002(1) ALT 466 AIR 1952 Hyderabad 75 ILR 72 A.P. 652 1996(2) ALT 950 1999(4) ALT 209-DB AIR 1954 SC 575 AIR 1973 SC 1299 AIR 1979 SC 861 2000(7) SCC 611 Civil Appeal No.4702/2004, dt. 7-1-2004 Land Systems of British India, by B.H. Baden Powell : From the very early times a right was asserted in favour of the person who first cleared the land, had undertaken the great work of removing the dense jungle and contending against tropical nature, till the land was one for the plough. In Manu it is written the sages declare a field belong to him who first cleared away the timber and a deer to him who first wounded it. The original theory of the Muslims was that conquered races were to be offered the option between adopting the creed or death or slavery. But the thing was given away to the more practicable one, that conquered races, if they submitted and agreed to pay tribute (Khiraj) were to be set alone. The author of Hidaya (a text book of Muhammadan Law) lays it down that if a prince conquers a country, he is at liberty either to divide the land among his soldiers or to have it in the possession of the inhabitants on their agreeing to pay capitation (Jaziya) and land taxes in the later case, the right of the property remains with the inhabitants. The author of Hidaya also has adopted the same rule as the law of Manu asserts, viz., the land is the property of him who first cleared it and Col. Vanis Kennedy (on the Mohammadan law, Journal Associate Society) says that all Muhammadan jurists agree that the person who first appropriates and cultivates waste land becomes ipso facto the lord of the soil.

9 Madras 175 Manual of Administration-I, page-104 23 MLJ 32 AIR 1930 P.C. 103 (2010) 5 SCC 203 Section 2 : Right of property in public roads, etc., water and lands: (1) All public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks and all canals and water-courses, and all standing and flowing water, and all lands, wherever situated, save

in so far as the same are the property, -

(a) of any zamindar, poligar, mittadar, jagirdars, shrotriendar or any person claiming through or holding under any of them, or

(b) of any person paying shist, Kattubadi, jodi, poruppu or quit-rent to any of the aforesaid persons, or

(c) of any person holding under ryotwari tenure, or in any way subject to the payment of land-revenue direct to Government; or

(d) of any other registered holder of land in proprietary right, or

(e) of any other person holding land under grant from the Government otherwise than by way of licence, and as to the lands, save also in so far as they are temple sites or owned as housesite or backward, be and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement rights of other land owners, and to all customary rights legally subsisting. (2) All public roads and streets vested in any locality shall, for the purposes of this Act, be deemed to be the property of Government.

(2009(7) SCC 363) (2009(3) ALT 419) 2011(1) ALT 474 W.P.No.6061/2010, dt.2-7-2010 2011(2) ALT 2 See : Handbook of Land Records by Mr. P. Kasturi Reddy 1st Edition (2010) 5 SCC 382 1984(1) APLJ 219 1970(1) ALT 88