

[3393]

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THURSDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

WRIT APPEAL NOS: 933 AND 979 OF 2016

WA NO.933 OF 2016:

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 09-08-2016 passed in WP.No.6890 of 2016 on the file of the High Court.

Between:

The Secunderabad Cantonment Board,, Rep.y its Chief Executive Officer,
City Civil Court Compound, S.P.Road, Secunderabad

...APPELLANT

AND

1. Khajka Abdul Samad,, S/o Late Khaja Adbul Rehman, aged about 48 years, Occ Business.
2. Khaja Abdul Salam,, S/o Late Khaja Adbul Rehman, aged about 46 years, Occ Business.
3. Khaja Abdul Saleem,, S/o Late Khaja Adbul Rehman, aged about 48 years, Occ Business.
4. Khaja Abdul Sayeed,, S/o Late Khaja Adbul Rehman, aged about 36 years, Occ Business.

Respondents No.1 to 4 are residents of H.No. 4-1-177, V.S.T.Colony, Nacharam, Ranga Reddy District. Rep.by their General Power of Attorney Holder Sri Y.Yadava Rao, S/ o Late Y.Viswanath, Aged about 62 years, Occ Business, R/o H.No. 12-13-97, Tara Tycoon, Flat No.311, Tarnaka, Secunderabad.

....RESPONDENTS/WRIT PETITIONERS

5. The State of Telangana,, Rep.by its Principal Secretary, Revenue Department, Secretariat Buildings, Hyderabad.
6. The Commissioner,, Survey, Settlement and Land Records, State of Telangana, Narayanaguda, Hyderabad.
7. The District Collector and Magistrate,, Ranga Reddy District, Lakadikapool, Hyderabad.
8. The Joint Collector,, Office of District Collector, R.R.District, Ranga Reddy District, Lakadikapool, Hyderabad.
9. The Assistant Director,, Survey, Settlement and Land Records, O/O Collector Complex, R.R.District, State of Telangana, Lakadikapool, Hyderabad.
10. The District Revenue Officer,, O/o District Collector, R.R.District, Lakadikapool, Hyderabad.
11. The Tahsildar,, Malkajgiri Mandal Neredmet, Ranga Reddy District, Secunderabad.

12. Sri Khaja Yousuf S/o. Late (Sri) Khaja Kareemuddin,
R/o.H.No.8.4.369/211/237, SRT Nagar, Boarbanda, Hyderabad.
13. Sri Khaja Fareeduddin S/o. Late (Sri) khaja Kareemuddin,
R/o.H.No.8.4.369/211/226, SRT Nagar, Boarbanda, Hyderabad.
14. Ms. Begum Waheeda Bee W/o. Late (Sri) Abdul Mannan and Daughter of late
(Sri) Khaja Hyder, R/o.H.No.8.4.369/211/18, SRT Nagar, Boarbanda,
Hyderabad.

(Respondent Nos. 12 to 14 are impleaded as per Court Order dated
11.07.2024 in I.A.No.1 of 2019 in W.A.No.933 of 2016)

...RESPONDENTS

I.A. NO: 1 OF 2016(WAMP. NO: 2156 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation and effect of the common Order dated 09.08.2016 made in W.P.No. 6890 and if 2012 on the file of this Hon'ble High Court pending disposal of the above Writ Appeal

**Counsel for the Appellant: SRI K. R. KOTESWERA RAO
SC FOR CANTONMENT BOARD**

**Counsel for Respondent Nos. 1 to 4: SRI Y. CHANDRA SEKHAR,
SENIOR COUNSEL FOR
SRI P. RAGHAVENDRA RAO**

Counsel for Respondent Nos. 5 to 11: GP FOR REVENUE

Counsel for Respondent Nos. 12 to 14; SRI T. VIJAY HANUMAN SINGH

WA NO: 979 OF 2016

Writ Appeal under clause 15 of the Letters Patent preferred against the Order dated 09.08.2016 passed in WP No. 6909 of 2012 on the file of the High Court.

Between:

The Secunderabad Cantonment Board, Rep. by its Chief Executive Officer,
City Civil Court Compound, S.P.Road, Secunderabad

...APPELLANT/RESPONDENT NO.8

AND

1. Khajka Abdul Samad, S/o Late Khaja Adbul Rehman, aged about 48 years,
Occ Business. R/o. H.No. 4-1-177, V.S.T.Colony, Nacharam, Ranga Reddy
District. Rep.by their General Power of Attorney Holder Sri Y.Yadava Rao, S/o
Late Y.Viswanath, Aged about 62 years, Occ Business, R/o H.No. 12-13-97,
Tara Tycoon, Flat No.311, Tarnaka, Secunderabad.
2. Khaja Abdul Salam,, S/o Late Khaja Adbul Rehman, aged about 46 years,
Occ Business. R/o. H.No. 4-1-177, V.S.T.Colony, Nacharam, Ranga Reddy
District. Rep.by their General Power of Attorney Holder Sri Y.Yadava Rao, S/o
Late Y.Viswanath, Aged about 62 years, Occ Business, R/o H.No. 12-13-97,
Tara Tycoon, Flat No.311, Tarnaka, Secunderabad.

3. Khaja Abdul Saleem,, S/o Late Khaja Adbul Rehman, aged about 48 years, Occ Business. R/o. H.No. 4-1-177, V.S.T.Colony, Nacharam, Ranga Reddy District. Rep.by their General Power of Attorney Holder Sri Y.Yadava Rao, S/o Late Y.Viswanath, Aged about 62 years, Occ Business, R/o H.No. 12-13-97, Tara Tycoon, Flat No.311, Tarnaka, Secunderabad.
4. Khaja Abdul Sayeed., S/o Late Khaja Adbul Rehman, aged about 36 years, Occ Business. R/o. H.No. 4-1-177, V.S.T.Colony, Nacharam, Ranga Reddy District. Rep.by their General Power of Attorney Holder Sri Y.Yadava Rao, S/o Late Y.Viswanath, Aged about 62 years, Occ Business, R/o H.No. 12-13-97, Tara Tycoon, Flat No.311, Tarnaka, Secunderabad.

....RESPONDENTS/WRIT PETITIONERS

5. The State of Telangana,, Rep.by its Principal Secretary, Revenue Department, Secretariat Buildings, Hyderabad.
6. The Commissioner,, Survey, Settlement and Land Records, State of Telangana, Narayanaguda, Hyderabad.
7. The District Collector and Magistrate,, Ranga Reddy District, Lakadikapool, Hyderabad.
8. The Joint Collector,, Office of District Collector, R.R.District, Ranga Reddy District, Lakadikapool, Hyderabad.
9. The Assistant Director,, Survey, Settlement and Land Records, O/o Collector Complex, R.R.District, State of Telangana, Lakadikapool, Hyderabad.
10. The District Revenue Officer,, O/o District Collector, R.R.District, Lakadikapool, Hyderabad.
11. The Tahsildar,, Malkajgiri Mandal Neredmet, Ranga Reddy District, Secunderabad.
12. Sri Khaja Yousuf S/o. Late (Sri) Khaja Kareemuddin, R/o.H.No.8.4.369/211/237, SRT Nagar, Boarbanda, Hyderabad.
13. Sri Khaja Fareeduddin S/o. Late (Sri) khaja Kareemuddin, R/o.H.No.8.4.369/211/226, SRT Nagar, Boarbanda, Hyderabad.
14. Ms. Begum Waheeda Bee W/o. Late (Sri) Abdul Mannan and Daughter of late (Sri) Khaja Hyder, R/o.H.No.8.4.369/211/18, SRT Nagar, Boarbanda, Hyderabad.
15. Khaja Ahmeduddin S/o Khaja Abdulla(Died) Per LRs
16. Khaja Naseeruddin, S/o Khaja Ahmeduddin
17. Khaja Hameeduddin S/o. Khaja Ahmeduddin
18. Khaja Habeebuddin S/o. Khaja Ahmeduddin (Died) Per LRs
19. Aliya Begum W/o. Khaja Habeebuddin
20. Quatija Begum D/o. Khaja Habeebuddin
21. Ayesha Begum D/o. Khaja Habeebuddin
22. Khama Mohammed Mherejauddin S/o. Khaja Habeebuddin (Sl.Nos.19 to 22 are LRs of the Respondent No.18 herein) (Respondent Nos. 12 to 14 are impleaded as per Court Order dated 11.07.2024 in I.A.No.1 of 2019 in W.A.No.933 of 2016)
23. Kaja Muneeruddin S/o. Khaja Ahmeduddin
24. Khaja Azemuddin S/o. Khaja Ahmeduddin
25. Khaja Moizuddin S/o. Khaja Ahmeduddin

(Respondents 15 to 25 are Rp/2-2-34/B, Rahathnagar, Amberpet, Hyderabad)

(Respondents 12 to 14 are impleaded vide I.A.No.2019 & Respondents 15 to 25 are impleaded I.A.No.1 of 2023 as per Court Order dated 11.07.2024 in WA No.979 of 2016)

...RESPONDENTS

I.A. NO: 1 OF 2016(WAMP. NO: 2206 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation and effect of the Common Order dated 09.08.2016 made in

WP No. 6909 of 2012 on the file of this Hon'ble High Court pending disposal of the above Writ Appeal

**Counsel for the Appellant in both appeals : SRI K. R. KOTESWERA RAO
SC FOR CANTONMENT BOARD**

**Counsel for Respondent Nos. 1 to 4 in both appeals: SRI Y. CHANDRA
SEKHAR,**

**SENIOR COUNSEL FOR
SRI P. RAGHAVENDRA RAO**

Counsel for Respondent Nos. 5 to 11 in both appeals: GP FOR REVENUE

**Counsel for Respondent Nos. 12 to 14 in both appeals: SRI T. VIJAY
HANUMAN SINGH**

**Counsel for Respondent Nos. 15 to 25 in W.A.No.979 of 2016: SRI D. V.
RAMANA SARMA**

The Court made the following: COMMON JUDGMENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT APPEAL Nos.933 AND 979 OF 2016

COMMON JUDGMENT: *(per the Hon'ble Shri Justice Anil Kumar Jukanti)*

Mr. K. R. Koteswara Rao, learned Standing Counsel for Cantonment Board for appellant in both the writ appeals.

Mr. Y. Chandra Sekhar, learned Senior Counsel represents Mr. P. Raghavendra Rao, learned counsel for respondent Nos.1 to 4 in both the writ appeals.

Mr. T. Vijay Hanuman Singh, learned counsel for the impleaded respondents in both the writ appeals.

2. These intra court appeals are filed challenging the order, dated 09.08.2016, passed by the learned Single Judge in W.P.Nos.6890 and 6909 of 2012. Since the issue involved is common in both the Writ Appeals, they are heard together and a common judgment is being passed.

3. Brief facts:

Dispute in these writ appeals pertains to land in Survey No.285 (old) admeasuring an extent of Ac.21.04 guntas and the same is not controverted. Respondent Nos.1 to 4 represented by their General Power of Attorney claim that they are grandchildren of Khaja Jalal. It is averred that a Munthakhab No.1251 in File No.3/11 of 1329 Fasli (1919 AD) was granted by Nizam of Hyderabad in respect of land admeasuring Ac.204.22 guntas in old survey Nos.253, 285, 288 and 290 of Khanojiguda, Alwal Village, Malkajgiri Mandal, Ranga Reddy District. It is further averred that subject land was under occupation of Khaja Jalal and was recorded as Pan Maqtha Inam lands, assessed for a revenue of Rs.744/- as per orders dated 1st Behman 1315 Fasli.

3.1 Respondent Nos.1 to 4 rely on certain revenue documents and claim that nature of land in old Sy.Nos.253 and 285 of Alwal Village as "Bapat Inam Maktha/Panmaktha Inam". Respondent Nos.1 to 4 claim that revenue records

depict that this land was assigned new Sy.Nos.357 to 372, 424 and 426 and that Khaja Jalal was in possession of property as Inamdar. Revenue Divisional Officer, Hyderabad (for short 'RDO') issued Succession Certificate vide proceedings in Case No.A5/4342/58, dated 04.07.1962, allotted shares by granting succession certificate among the inamdars.

3.2 It is averred that as per survey conducted during 1351 Fasli (1941 AD), the land situated in Sy.No.285 (old) to an extent of Ac.167.22 gts was one compact block. A resurvey was conducted in 1358 Fasli (1948 AD) and old Sy.No.285 was divided into 17 parts; out of these 17 parts, 16 parts were assigned new survey numbers 357 to 372 for an extent of Ac.146.16 gts. A portion of old Sy.No.285 to an extent Ac.21.04 gts was not assigned any Survey Number.

3.3 Respondent Nos.1 to 4 aver that several representations were made to the authorities to conduct a survey of left over area in old Survey No.285 and assign a new survey number.

First of such representations was made on 23.04.2007 and later on 19.03.2008, 14.12.2009 and 29.08.2010. A writ petition, namely W.P.No.27506 of 2007 was filed by appellant herein claiming that appellant purchased Ac.28.29 guntas in 1939 from Nizam Government and an additional land of Ac.0.17 guntas in Survey No.285 and a direction was sought for survey and assignment of a new survey number. Writ Petition was disposed of on 12.11.2009 with a direction to conduct survey and assign a new survey number. Pursuant to the directions, a survey was conducted vide proceedings No.Rc.A1/1963/2007, dated 07.08.2010, by Assistant Director, Survey Settlement and Land Records and recommended for assignment of new survey No.606 for an extent of Ac.21.04 guntas to the Commissioner, Survey Settlement and Land Records. The Commissioner issued proceedings Rc.No.N1/5213/2010, dated 27.09.2010, with certain observations. The said proceedings in Rc.No.N1/5213/2010, dated 27.09.2010, were challenged by respondent Nos.1 to 4 in W.P.No.6909 of 2012. By common

order, dated 09.08.2016, writ petition was allowed against which W.A.No.979 of 2016 is filed.

3.4 An application was filed by GPA holder of respondent Nos.1 to 4 before the Joint Collector (for short 'JC') for allotment of new survey number to the un-surveyed/left over/gap area in respect of old Sy.No.285 situated at Khanojiguda Village. The JC in pursuance of the Commissioner's assessment and observations held that the land be treated as Government land, recording the land as 'Poramboke' under pattedar column and showing the entire extent as pote kharab by assigning new Sy.No.606 to an extent of Ac.21.04 gts in seriatim in village situated at Khanojiguda, H/o. Alwal Village, Malkajgiri Mandal, Ranga Reddy District with usual procedure. JC further directed the Assistant Director, Survey and Land Records to issue supplementary sethwar after obtaining permission from District Revenue Officer (for short 'DRO'). This order of JC was challenged by respondent Nos.1 to 4 in W.P.No.6890 of 2012

and was allowed by learned Single Judge. Writ Appeal No.933 of 2016 is filed against the said order of learned Single Judge.

4. It is submitted by learned Standing Counsel appearing on behalf of the appellant that *vide* letter, dated 08.03.1937, appellant requested the Taluqdar of Bhagat District, Hyderabad Deccan, for acquisition of Ac.32.72 guntas situated between Khanojiguda and Hasmathpet for trenching purposes. It is further submitted that it was informed by letter, dated 06.07.1937, to the appellant that H.E.H. Nizam Government issued orders to place the land at the disposal of the appellant. It is also submitted that pursuant to a letter, dated 04.08.1937, it was agreed to handover the said extent of land on 18.08.1937.

4.1 It is contended that *vide* letter, dated 08.10.1937, the President of Cantonment Board addressed a letter to the Secretary to Hon'ble Resident, at Hyderabad to acquire a strip of land admeasuring Ac.0.39 guntas for an approach road to the trenching ground. It is further contended that *vide* letter,

dated 29.07.1938, the President, Cantonment Board, Secunderabad intimated to the Secretary to the Hon'ble the Resident, at Hyderabad that a cheque for H.S. Rs.8003.13 (Hali Sicca Rupees) being the compensation for the land comprising Ac.28.29 guntas taken by Cantonment Authority for transmission to Taluqdar, Bhagath District, Hyderabad, same be acknowledged by a stamped receipt. It is also contended that *vide* letter, dated 17.07.1940, from Secretary to Hon'ble the Resident to the President, Cantonment Board, that compensation payable for additional land admeasuring 0.39 Acres (17 guntas) acquired by the Board was fixed at H.S. Rs.98.60 P. (Hali Sicca Rupees) and that a cheque be transmitted to H.E.H. Government.

4.2 It is submitted that a letter, dated 15.03.1995, was addressed by the Mandal Revenue Officer, Malkajgiri (for short 'MRO') to the appellant that the trenching ground was demarcated by fixing boundaries and a sketch was prepared and was sent for necessary action. It is further submitted that

a letter, dated 19.03.1998, was addressed by the Secunderabad Cantonment Board to the District Collector to assign a separate survey number and to mutate the name of the Board in revenue records. It is also submitted that a compound wall was constructed at a cost of Rs.18,35,000/- to the trenching ground on the basis of a resolution, dated 31.01.2002, of the Board and the property was being guarded by Army Jawans. It is submitted that a Writ Petition bearing No.12509 of 2004 was filed by retired Lieutenant Colonel, complaining pollution due to dumping of municipal waste and the Board was directed to curtail pollution. It is further submitted that a request was made to concerned authorities to dump the municipal garbage at Jawaharnagar Village and permission was accorded.

4.3 It is submitted that a suit bearing O.S.No.705 of 2006 was filed in the Court of XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District, by father of respondent Nos.1 to 4 and

his brother for grant of permanent injunction restraining the appellant and five others from interfering with the possession and enjoyment of a parcel of land in old Sy.No.285 and that the said suit was dismissed holding that the plaintiffs were not in possession of the land.

4.4 It is submitted by the learned counsel for the appellant that appellant filed writ petition No.27506 of 2007, that appellant purchased Ac.28.29 guntas in 1939 from Nizam Government and an additional land of Ac.0.17 guntas in Survey No.285 seeking a direction for survey and assignment of a new survey number and that the writ petition was disposed of on 12.11.2009. It is further submitted that pursuant to the directions of High Court, a report vide proceedings No.Rc.A1/1963/2007, dated 07.08.2010, was submitted by JC to Commissioner of Survey, Settlement and Land Records requesting for assigning new survey No.606 for an extent of Ac.21.04 guntas. It is also submitted that the Commissioner issued proceedings Rc.No.N1/5213/2010,

dated 27.09.2010, with certain observations. It is contended that an application was made before the JC by the respondent Nos.1 to 4 for allotment of new survey number to an extent of Ac.21.04 gts and the JC basing on the Commissioner's assessment and observations held that the land be treated as Government land and directed Assistant Director Survey and Land Records to issue supplementary sethwar after obtaining permission from DRO.

4.5 It is submitted by the learned Standing Counsel for appellant that the learned Single Judge erred in holding that the appellant has no right to subject land. It is further submitted that the observations of the learned Single Judge that the documents filed by appellant are dubious is outside the purview of writ proceedings and that the prayer in the writ petitions do not seek adjudication of title. It is also submitted that the matter should have been remanded to civil Court. It is urged that the learned Single Judge has traversed beyond the scope of the prayer in the writ petition.

5. It is submitted by the learned Senior Counsel appearing on behalf of respondent Nos.1 to 4 that a Munthakhab No.1251 in File No.3/11 of 1329 Fasli (1919 AD) was granted by Nizam of Hyderabad in respect of land admeasuring Ac.204.22 guntas in old survey Nos.253, 285, 288 and 290 of Khanojiguda, Alwal Village, Malkajgiri Mandal, Ranga Reddy District to Khaja Jalal and that the said land is in their possession. It is further submitted that a survey was conducted in 1940 and later a re-survey was conducted in the year 1948 and an extent of Ac.21.04 gts of land in Sy.No.285 was left un-surveyed. It is also submitted that representations were made for survey of the left over land in Sy.No.285 (old). It is submitted that as per sethwar of 1950, old Sy.No.285 corresponding to certain new survey numbers was an extent of Ac.167.20 gts of land and during survey settlement operation, old survey was correlated to 16 new survey numbers i.e., Sy.Nos.357 to 372 covering an extent of Ac.143.30 gts and that a deficit of Ac.23.30 gts. It is pointed

out that pursuant to direction of High Court, a survey was conducted.

5.1 It is submitted that as per the statement in their affidavit, Cantonment Board claims that land is between Khanojiguda and Hasmathpet and not in Khanojiguda. It is further submitted that no conveyance deed of panchanama is placed on record and that there is no proposal for acquisition and no documents on record to show that there was any such proceedings for acquisition. It is also submitted that the respondent Nos.1 to 4 are legal heirs and that occupation rights certificates have been issued by the concerned authorities.

6. It is submitted by the learned counsel for impleaded respondents that they are the legal heirs, grand children of Khaja Abdullah (Brother of Khaja Meeran) by placing reliance on the Munthakhab granted. It is further submitted that once inam is granted, the question of acquisition proceedings doesn't arise. It is also submitted that the land acquisition

proceedings were in vogue and that there is no Section 4(1) notification issued with respect to the land being claimed by appellant. It is submitted that survey was conducted and the subject parcel of land of Ac.21.04 gts was left un-surveyed. It is lastly submitted that the impleaded respondents are lineal descendents of the Munthakhab holders and are rightful heirs.

7. Heard learned counsels, perused the record and considered the rival submissions.

8. Respondent Nos.1 to 4 are grandchildren of late Khaja Jalal. A Munthakhab No.1251 in File No.3/11 of 1329 Fasli (1919 A.D.) was granted by the Nizam of Hyderabad in respect of land admeasuring Ac.204.22 gts in old Sy.Nos.253, 285, 288 and 290 of Khanojiguda, H/o.Alwal village, Malkajgiri Mandal, Ranga Reddy District. It is pertinent to note that a copy of the Munthakhab No.1251 in File No.3/11 of 1329 Fasli (1919 A.D.) granted by the Nizam of Hyderabad was not part of the record and it was presented to the Court only on

the request of the Court, when the Court listed the matter under the caption "for further hearing".

9. On a perusal of both the Munthakhab(s) submitted, it is imperative to note certain important facts. The relevant extracts of the Munthakhabs presented by both learned counsels appearing on behalf of the respondent Nos.1 to 4 and impleaded respondents are as follows:

"1) The following entries are reflected in the Munthakhab submitted by the respondent Nos.1 to 4:

At column no.2

File No. of the secretariat 3/11 of 1329 Fasli

At column no.3

Muntakhab Tahasil No.1251

At column no.4

Khaja Osman S/o Khaja Ghouse R/o Khajajiguda, claimant
Khaja Mia
Khaja Ali
Khaja Shareef
Bawa Sahed Zafar Ali

At column no.13

Pan Makhta land Inam as Khaja Jalal situated at Khanajiguda Siwar Alwal

2) The following entries are reflected in the Munthakhab submitted by the impleaded respondents:

At column No.2

Dept. of Secretary File No.3/11 of 1329 Fasli

At column No.3

No.1251 Mumtakhah of Secretariat

At column No.4

Khaja Osman S/o Khaja Ghouse R/o Khanajiguda

Khaja Miran

Khaja Ali

Khaja Shareef

Yawer Sahed Jafar Ali

At column No.13

Pan Makhta land known as Khaja Jalal situated at Nanajiguda, Siwar Alwal"

10. Be that as it may, in both the Munthakhabs, no survey number is mentioned in any of the columns. When a survey number is nowhere mentioned in the Munthakhab No.1251 in File No.3/11 of 1329 Fasli (1919 A.D.) granted by the Nizam of Hyderabad, it defies logic as to how the respondent Nos.1 to 4 and the impleaded respondents can claim the extent of land of Ac.21.04gts in Sy.No.285(old).

11. It is important to note that in column No.14 of both the Munthakhabs, the AREA/EXTENT is reflected as follows:

"Total Makhta land 104 Bighas, as reflected in the
Munthakhab of respondent Nos.1 to 4.

104 Bighas Maqhta land, as reflected in the Munthakhab of impleaded respondents.

1 Bigha is equal to 0.62 Acre, 104 bighas would sum upto Acres 64.48 gts in total, approximately the total extent of land in the Munthakhab would be only to an extent of 65 acres and 8 guntas."

Munthakhab submitted by respondent Nos.1 to 4:

| | | |
|--|----|--|
| 1 | 1 | Serial No. of succession |
| File No. of the secretariat 3/11 of 1329 Fasli | 2 | No. of case preliminary & years |
| Muntakhab Tahasil No.1251 | 3 | No. of execution date & year |
| 1. Khaja Osman S/o Khaja Ghouse R/o Khajajiguda, claimant 2. Khaja Mia 3. Khaja Ali 4. Khaja Shareef 5. Bawa Sahed Zafar Ali | 4 | Nature of the person whose name maash issued is grant i.e., statement holder Father's Residence |
| No succession statement prior to its has prepared and sanctioned | 5 | If any succession statements sanctioned prior to it, then the name of that person is where name sanction has been sanctioned one after the other father's name and residence |
| Banu BI W/o Khaja Mia R/o Khanajiguda | 6 | Name of the person whose name the succession is granted Father's & Residence |
| Statement holder : Khaja Meera wife of demised person | 7 | Relation |
| Isfandar 1339 Fasli | 8 | Date of death of ancestor |
| Date of execution of proclamation 25 th Bahaman 1341 Fasli | 9 | Date of execution of advertisement Huzuri claimant |
| 2 nd Dai 1341 Fasli | 10 | Date of appearance of successor |
| Khaja Meeran ancestor after demise appeared within three years | 11 | If any successor during the period of advertisement could not attend the reason of delay |
| Retired | 12 | The successors appeared in time |
| Pan Makhta land Inam as Khaja Jalal situated at Khanajiguda Siwar | 13 | Kind of Maash, Jagir Maqhta Inam daily |

| | | |
|--|----|--|
| Alwal | | |
| Total Makhta land 104 Bighas | 14 | Area |
| Rs.1000/- (Rupees One Thousand Only) | 15 | Assessment |
| - | 16 | Cash |
| Rs.1000/- | 17 | Total |
| 181 - 14 - 0 | 18 | Deduction of pan or Government share if found |
| 818 - 2 - 0 | 19 | The Balance is released |
| - | 20 | Conditions grant |
| - | 21 | - |
| - | 22 | - |
| - | 23 | - |
| Munthakhab submitted by Impleaded Respondents | | |
| 1 | 1 | Serial No. of succession |
| Dept. of Secretary File No.3/11 of 1329 Fasli | 2 | No. of original suit with year |
| No.1251 Mumtakhab of Secretariat | 3 | File No. with date and |
| 1. Khaja Osman S/o Khaja Ghouse R/o Nanajiguda 2. Khaja Miran 3. Khaja Ali 4. Khaja Shareef 5. Yawer Sahed Jafar Ali | 4 | Name of that person in whose name land is granted (i.e., holder of statement) with father's name and residence |
| Prior to this no succession statement is either prepared or sanctioned | 5 | If succession statement has been sanctioned prior to this, then the name of said person is whose name one after succession is sanctioned, with father's name and residence |
| Khaja Sharuddin and Khaja Hyder, resident of Nanjiguda | 6 | Name of such person whose name now succession is to be sanctioned, with Father's name and Residence |
| They are statement holder late Khaja Ali's brother's sons | 7 | Relation with present person or past successor and further statement holder |
| | 8 | |
| 25 Behman year 1341 are successorts of Mqtha Nanajiguda comprehensively one citation is issued: compliance of publication/citation, successors are included in file. | 9 | Date of compliance of publication and appearance of objectioner |
| 31 Ardibehisht year 1341 F | 10 | Date of appearance of successor |
| | 11 | If any successor does not appear within publication period then the reason of delay |
| It is released | 12 | Details of this fact that land is seized or released, if seized then from which date it is seized and for |

| | | | | |
|--|----|---|------|-----------------|
| | | what reasons | | |
| Pan Makhta land known as Khaja Jalal situated at Nanajiguda, Siwar Alwal | 13 | Kinds of land, jagir, maqtha, inam, rusum mahmul etc. | | |
| 104 Bighas Maqhta land | 14 | Extent | Land | Quantum of land |
| 1000/- One Thousand Rupees | 15 | Revenue | | |
| - | 16 | Cash | | |
| Rs.1000/- (One Thousand Rupees) | 17 | Total of column 15, 16 | | |
| (Arabic figure) | 18 | Minus Pan (cess) or Govt. share, if decided to be in inam inquiry | | |
| (Arabic figure) | 19 | Remaining released | | |
| - | 20 | Condition of grant | | |

12. It is the specific claim of the respondent Nos.1 to 4 that they are the legal heirs of Khaja Jalal and Munthakhab No.1251 in File No.3/11 of 1329 Fasli (1919 A.D.) was granted by the Nizam of Hyderabad to Khaja Jalal. It is further their case that as per various revenue records, the land situated in Sy.No.285 (old), 253, 288 and 290 to an extent of Ac.204.22 gts of Khanojiguda, H/o. Alwal village, Malkajgiri Mandal is "panmaktha" land belonging to "Maktha Khaja Jalal" and Khaja Jalal was granted Munthakhab for the entire extent of land and they were in possession and enjoyment of the said land.

13. We fail to understand how the respondent Nos.1 to 4 claim an extent of Ac.204.22 gts of land in various survey

numbers including that of Sy.No.285(old) when it is clearly evident from the Munthakhab that the area/extent of land granted is only 104 bighas which comes to an extent of only Ac.65.08 gts. Reliance is placed on the Munthakhab No.1251 in File No.3/11 of 1329 Fasli (1919 A.D.) granted by the Nizam of Hyderabad as the source of the title for the entire extent of land by the respondent Nos.1 to 4. In the light of the entry in Munthakhab No.1251 in File No.3/11 of 1329 Fasli (1919 A.D.) granted by the Nizam, we are afraid the contention cannot be sustained. The claim cannot be made beyond what has been granted in the Munthakhab and has to be restricted to the extent indicated in the grant.

14. JC-II of Ranga Reddy district in proceedings No.Rc.A1/963/2007, dated 07.08.2010, submitted a report to Commissioner wherein he stated as follows:

“Pursuant to the orders of the Hon'ble High Court in WP.No.27506/2006 dated 12-11-2009, the Tahsildar Malkajgiri Mandal vide Lr.No.B762/2009-dated 30-01-2010 has requested to demarcate the suitLand and to assign new Survey Number. It is submitted that the former Inspector of Survey of this office

has demarcated the subject land with the help of the relevant records of this office by using ETS instrument. He demarcated and picked up measurements for the un-surveyed left over / gap area and worked out the area as an extent of Ac.21-04 gts which is tallied to the ground. The former Assistant Director has also inspected the Land on 25-7-2008 and found that there is un-accounted and left over area which is a part and parcel of (old) Sy.No.285 of Alwal Village.

It is submitted that as per Sethwar for the year 1950 AD, the classification as per Col.No.(3) of above survey numbers is recorded as Panmaktha and as per Khatedar Col (4) the name of Sri.Khaja Jalal Sab is recorded.

It is submitted the Village map of 1358 Fasli of Alwal Village Malkajgiri Mandal is verified. As seen on the map there is un-surveyed/left over/gap area. This gap area is verified falling on the Village boundary in between Alwal Village of Malkajgiri Mandal and Hashmathpet Village of Balanagar Mandal.

It is further submitted that I have inspected the land on 20-7-2010 along with the Cantonment Board related persons; Dy. Inspector of survey, Assistant Director Survey and Land Records, and the Tahsildar Malkajgiri Mandal were present. The said land has been protected by a compound wall and the board "Cantonment Land" is also shown. It is covered by debris, thick growth of shrub and dumped municipal waste. There are enough signs to show that the land had been used as a ground, for throwing debris. However there are multiple claims on the land, and several representations have been received.

It is further submitted that when both the Village maps i.e., Alwal for the year 1358 Fasli and Hashmathpet for the year 1328 Fasli are juxtaposed, it is seen that the Village boundary in

between Alwal and Hashmathpet are tallying. There is left over/un-Surveyed area which is falling within the Village Boundary of Alwal Village of Malkajgiri Mandal This un-surveyed area needs to be assigned a new survey number 606 i.e., the last survey number of the village of Alwal Village, Malkajgiri Mandal Ranga Reddy District.

I am submitting herewith the following Xerox copy of records of Khanojiguda H/o Malkajgiri Mandal for kind perusal.

- 1) Copy of Sethwar for the year 1950 for the subject land Sy.Nos mentioned in para (2) above.
- 2) Copy of WassolBaqui for the year 1354 Fasli in respect of Khata No.2 of old Sy.No.285.
- 3) Copy of village map Alwal Village of Malkajgiri Mandal for the year 1358 Fasli & Copy of old Map of 1351 Fasli (Reprint).
- 4) Copy of Village Map Hashmathper Village Balanagar Mandal for the year 1328 Fasli.
- 5) Sketch of old Sy.No.285 along with ETS measurements picked up by the former Inspector of Survey.
- 6) Spot inspection report dated 25-7-2008 of the former Assistant Director Survey & Land Records.

Therefore, I request the Commissioner of Survey Settlement and Land Records A.P Hyderabad to kindly accord permission for assigning new Survey Number 606 to an extent of Ac.21-04 gts to the left over gap area in Khanojiguda, H/o Alwal Village Malkajgiri Mandal Ranga Reddy District and communicate the orders and necessary directions to act on this issue".

15. Pursuant to proceedings in Rc.No.A1/963/2007, dated 07.08.2010, of JC-II addressed to the Commissioner, Survey Settlement and Land Records, AP Hyderabad, to accord permission for assigning New Sy.No.606 to an extent of Ac.21-04 gts to the left over gap area in Khanojiguda, H/o Alwal Village of Malkajgiri Mandal, Ranga Reddy District and communicate the orders and necessary direction to act on the issue, the Commissioner vide proceedings in Rc.No.N1/5213/2010, dated 27.09.2010, forwarded reply to the District Collector, Ranga Reddy. In his proceedings, the commissioner stated as follows:

"Permission was sought for assigning new Sy.No. to an extent of Ac.21-04 gts to the left over gap area in Khanbjiguda H/o Alwal. The proposal has been carefully examined it is clearly evident from the enquiry report of the Joint Collector dated 7-8-2010 that the subject matter extent of Ac 21-04 gts was left un-surveyed during the last survey in the year 1940 for the obvious reason that it did not form part of the holding of any khatedar at that time. As such, it cannot be related to holdings in the old Sy.No.285 which were recognized and correlated to 16 new survey numbers as mentioned in the Joint Collectors report based on the entries in Wasool baqui. What follows is that the subject matter land is an un-assessed waste land

vested in Government, even if it were to be an Inam Village. There was no claim or objection from any quarter in this regard after re-survey for several decades, after the survey. An occupancy right, if any, arising from the Survey and Settlements done six decades back cannot be now enlarged to include a neighboring piece of un-surveyed land vested in Government. To sum up the subject matter land is to be necessarily treated as vested in the Government and the question of applicability of Sec.87 of the APTA (LR) Act, 1317Fasli does not arise in this case.

Subject to this clarity and the legal position you may take action as per the procedure to assign a new Survey number in seriatim in the Village in compliance of the orders of the Hon'ble High Court. The claims if any in respect of this land should be dealt with keeping in view of the about fact and legal position".

16. This proceedings of Commissioner, dated 27.09.2010, is the subject matter of challenge before the learned Single Judge in W.P.No.6909 of 2012.

17. An application was filed by Khaja Ahmeduddin, S/o Khaja Abdulla & 3 others represented by their GPA Holder Sri Y. Yadav Rao, D.No.12-13-97, Tara Tycoon, Plot No.311, 3rd Floor, Tarnaka, Secunderabad-17, for allotment of new survey number to the un-surveyed/left over/gap area in

respect of old Sy.No.285 situated at Khanojiguda, H/o Alwal Village, Malkajiri Mandal, Ranga Reddy District. In the said application, the petitioner submitted that ancestor namely Khaja Jalal Saheb was inducted into possession of the land covered by old Sy.Nos.285 of Khanojiguda, H/o Alwal Village by grant of Muntakhab No.1251 in File No.3/11 of F.1329. The Muntakhab was granted by the Nizam, which was confirmed by the Hon'ble Committee Estate Hon'ble Raja Rayan Maharaja Sri Kishan Prasad Bahadur KCIE HEH the Nizam dated 30th Aban Fasli 1324. The total extent covered by the old Sy.No.285 is admeasuring Ac.167-20 gts. After the survey, the old Sy.No.285 was divided into several survey numbers. The new survey numbers assigned to old Sy.No.285 are Sy.Nos.372, 371, 370, 369, 368, 359, 367, 366, 358, 365, 360 and 361. As per the village accounts and revenue records, in the extents covered by new survey numbers, there is a difference of Ac.57-05 gts.

18. The JC in his order, dated 25.05.2011, held as follows:

"...The counsel for inamdar present. He argued the case. Sec. (14) of the inam Act has Civil Suit of declaratory nature. He argued that the inam issue with regard to Sy.Nos. 367 and 368 was dealt the Hon'ble High Court remanded the case to Joint Collector, who had passed the orders. He argued that the cantonment board in WP No. 17697/1989 the Chief Executive Officer of cantonment board claimed Sy.No.1 of Hashmathpet Village as their land. He further argued that he had applied for sketch and letter dated: 15-3-1995 of Mandal Revenue Officer Malkajgiri. The Mandal Revenue Officer Malkajgiri stated that connected file is not available. He argued that the Hon'ble High Court in 27506/2007 dt: 12-11-2009 asked the parties to agitate their claims before the competent authorities.

The original Sethwar, Wasool Baqui and original atiyath order to be produced before this court including the pahanics from 1950s. case posted to 25-3-2011.

On 25-3-2011 the counsels present. The counsel for Khaja Ahmeduddin submitted the copies of various orders and other document. The counsel for cantonment board sought time. The documents like Wasool Baqui. Classer Register, Sethwar were verified. Posted to 1-4-2011.

On 1-4-2011 the counsel for the cantonment board present. He argued the case and stated that the issue relates to only to allotting of New survey number. There is also Court direction relating to this.

Order:

On perusal of reports and records it is evident that the subject matter extent of Ac.21-04 gts was left un-surveyed during the last survey in the year 1940 for the obvious reasons that it did not form part of the holdings at that time. There are multiple claims on this land by the cantonment board and private parties. The Commissioner Survey Settlement and Land Records A.P. Hyderabad has already taken decision vide letter No.N1/5213/2010 dt: 27-9-2010 in the matter that Sec. 87 LR

Act 1317 Fasli is not applicable to the present case. Inams Act is also not applicable to un-surveyed land. Since rights of private parties are not recognized or recorded in respect of un-surveyed lands. Such lands are to be treated as lands vested in Government. Further in pursuance of the Commissioner Survey Settlement and Land Records A.P. Hyderabad assessment and observations the land be treated as Government land duly recording the land as poramboke under pattedar column and showing the entire extent as pote kharab by assigning new Sy. Number 606 to an extent of Ac.21-04 gts in seriatim in village situated at Khanojiguda H/o Alwal Village Malkajgiri Mandal Ranga Reddy District with usual procedure.

In view of the above facts the Assistant Director Survey and Land Record is directed to issue Supplementary Sethwar accordingly after obtaining permission from the District Revenue Officer, Ranga Reddy District.”

19. This order of JC, dated 25.05.2011, is the subject matter of challenge before the learned Single Judge in W.P.No.6890 of 2012.

20. W.P.No.6890 of 2012 is filed with the following prayer:

“Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings in letter No. Rc.No.A1/963/2007, dated 25.05.2011, as illegal, arbitrary, unconstitutional and gross violation of principles of natural justice and contrary to section 87 and 90 of Andhra Pradesh (Telengana Area) Land Revenue Act, 1955 (herein after called as Act), 1317 fasali and consequentially set aside the proceedings in letter Rc.No.A1/963/2007, dated 25.05.2011 and direct the respondents to mutate the petitioners names as pattedars by

issuing supplementary Sethwar for S.No.606 of Khanno jiguda, H/o Ac. 21.04 guntas and grant occupancy Rights Certificate (ORC) under the provisions of Inams Abolition Act and issue pattadar pass books and title deed books”.

21. W.P.No.6909 of 2012 is filed with the following prayer:

“Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the proceedings in letter Rc.No.N1/5213/2010, dated 27.09.2010 of the second respondent, as illegal, arbitrary, unconstitutional and gross violation of principles of natural justice and contrary to section 87 and 90 of Andhra Pradesh (Telangana Area) land Revenue Act, 1955 (herein after called as Act), 1317 fasli and consequently set aside the proceedings Rc.No.N1/5213/10, dated 27.09.2010 and direct the respondents to enter the name of the petitioners as pattedars of newly assigned Sy.No.606 of Khanno jiguda, H/o. Alwal, Malkajigiri Mandal, Ranga Reddy District to the extent of Ac.21.04 guntas”.

22. Learned Single Judge by common order, dated 09.08.2016, allowed both the writ petitions filed by the respondent Nos.1 to 4. The relevant portion of the order is as follows:

“THE POINTS FOR CONSIDERATION

39. The following points arise for consideration in the matter:

- a) Whether the orders of 2nd respondent in his proceedings Rc.No.N1/5213/2010 dt.27-09-2010 addressed to the 3rd respondent and those of the 4th respondent in his proceedings Case No.A1/963/2007 dt.25-05-2011 are void in law?

- b) Whether they are competent to declare that the unsurveyed extent of Ac.21.04 gts in old Sy.No.285 of Khanojiguda, h/o. Alwal village as Government land and to declare that provisions of AP (Telangana Area) Abolition of Inams Act, 1955 as well as the AP (Telangana Area) Land Revenue Act, 1317 Fasli (in particular Section 87 thereof) have no application to the land?
- c) Whether the petitioners or 8th respondent are entitled to any relief?

POINTS (a) & (b):

(i) FINDING OF RESPONDENT Nos.2 AND 4 THAT SEC.87 OF THE ACT DOES NOT APPLY IS ERRONEOUS

48. Section 86 of the AP (Telangana Area) Land Revenue Act, 1317 Fasli states:

“Sec.86. Preparation of Register:

(1) The Survey officer shall, at each settlement, prepare a separate register for each village showing the area and assessment of each number together with the name of the pattadar. This register and other records shall be prepared in accordance with the rules made by the Government by notification...”

49. Section 87 of AP (Telangana Area) Land Revenue Act, 1317 Fasli states:

“Section 87 - Settlement Officer to correct clerical and other errors admitted by all parties and application for correction of name to be made within two years:

The Director of Settlements and on making over the settlement records to the Collector, the Collector may, at any time, correct or cause to be corrected any clerical error or errors admitted by the party concerned.

The aforesaid officer shall hear all applications made within two years after the introduction of the settlement, for the correction of any wrong entry of a pattadar's name in the

register referred to in the preceding section and if satisfied about the error whether such error has been made through negligence, fraud, or collusion shall correct the same, notwithstanding that the party concerned does not admit the error but no such application shall be entertained after two years, unless reasonable cause is shown to the said officer for the delay, and in such cases if any error is proved it shall not be corrected without obtaining the sanction of the Government."

50. Section 87-A provides for delegation of power of the Government under Section 87 of the Act to the 2nd respondent.

51. The above provisions provide for correction of clerical and other errors in settlement register maintained under Sec.86 and confer powers on the 2nd respondent to sanction such correction if request for correction is made by an applicant, before or after two years from the introduction of the settlement.

52. Since there is no dispute that the request of the family members of Khaja Jalal for allotting a new survey number to the unsurveyed extent of Ac.21.04 gts in old Sy. No.285 of Khanojiguda village was made long after the settlement/resurvey in 1350 Fasli, in the year 2007, the competent authority to sanction such correction is the 2nd respondent. That was why the Office of the 2nd respondent in proceedings Rc.No.N1/2208/2008 dt.19-03-2008, after accepting that after the resurvey in 1940, still there is unsurveyed extent in old Sy. No.285 of Khanojiguda, directed that correction be sought by the family members of the petitioners (Khaja Naseeruddin) under Section 87 of the Act before the 6th respondent.

53. Having so directed the family members of the petitioners to approach the 6th respondent under Section 87 of the Act, it is inexplicable how the 2nd respondent in the proceedings Rc.No.N1/5213/2010 dt.27-09-2010 changed his opinion and stated that the said provision of law does not apply.

54. In my opinion, the omission of the respondent Nos.1-6 in not surveying the land other than the land for which they had

assigned 16 Survey no.s in 1940 and in not allotting a Survey number to the said land at that time, clearly falls within the ambit of Sec.87 of the Act since it is admitted by all parties that it is true. This appears to be on account of negligence of the Survey officials in 1940. Therefore to that extent, it is not open to 2nd respondent to state that Sec.87 is not attracted.

...

...

61. The term "Pan Makhta" means a nominal amount fixed on the grant of Maqta to preserve the proprietary rights of the Government over the land granted. [See Glossary in the Book "Revenue Laws of Andhra Pradesh (Telangana Area) by V.Rajaiah (October 2004 Edition)].

62. If it is Inam land, according to provisions of AP (Telangana Area) Abolition of Inams Act, 1955, all the inams vest in State as on 20th July, 1955. However, in case the inamdars or various types of persons mentioned in Sections 5, 6, 7 and 8 of the Act were in possession of the land as on 1-11-1973, they would be entitled to get occupancy rights under the Act. A Division Bench of this Court in B. Ramender Reddy and Ors. v. The District Collector, Hyderabad District and Ors [1993 (2) A.W.R.84 (D.B.)] held that right to get occupancy rights is not co-related to the vesting of inams in the Government and that even though all the inams vested in State as on 20th July, 1955, in case the inamdars or various types of persons mentioned in Sections 5, 6, 7 and 8, who were in possession of the land as on 1-11-1973, they would be entitled to get occupancy rights under the Act. This view has also been followed in G.Venkat Ram Reddy v. Najeebunnissa [2005(5) ALD 156 (DB)]. Therefore the mere fact that the inam vested in the State as on 20th July, 1955 does not mean that rights, if any, of persons such as petitioners, get extinguished and the State becomes owner of the property.

63. It is settled law that the AP (Telangana Area) Abolition of Inams Act, 1955 empowers the competent authority under Section 10 thereof to decide not only the nature and history of the land but also to determine who is entitled to be registered as an occupant of the land subject to appeal under Section 24 and further revision under Section 28. It is thus a complete code in itself. The 2nd

respondent and the 4th respondent are not competent authorities under the AP (Telangana Area) Abolition of Inams Act, 1955 to decide whether the said land of Ac.21.04 gts in old Sy. No.285 of Khanojiguda village, h/o.Alwal which is now assigned new Sy.No.606 is inam land or not and whether the petitioners or somebody else is entitled to Occupancy Right Certificate under the provisions of the said Act. This legal position is not disputed by the Government Pleader for Revenue, State of Telangana who appeared for respondent Nos.1 to 7.

(iv) SURVEY AFTER 2008 BY RESPONDENTS DOES NOT DESTROY RIGHTS, IF ANY, OF PETITIONERS

64. Also, any survey got done after 2008 by the respondent Nos.1-7 of the land in old Sy.No.285 of Khanojiguda does not result in the title to it, if any, of persons like petitioners vanishes and gets vested in the Government.

65. In Hyderabad Potteries Limited Vs. Collector, Hyderabad [2001 (3) A.L.D. 600], it has been held that the scheme of the AP Survey and Boundaries Act, 1923 (under which the survey after 2008 was done) makes it clear that survey made under the said Act is mainly intended for the purposes of identification of the lands and fixation of boundaries. It held that there is no provision under the Act intending to make any detailed enquiries with regard to the right, title or interest of persons in the lands. This view received its affirmation in the hands of a Division Bench of this Court in W.A.No.1096 of 2001 against which the District Collector preferred S.L.P. and the same was dismissed. This is stated in State of Andhra Pradesh Vs. Prameela Modi [2005 (4) A.L.D. 105 (DB)].

66. Therefore it is not open to the 2nd respondent to state that even if this land in an inam village, it is unassessed waste land which vests in the Government or for the 4th respondent to state that the AP (Telangana Area) Abolition of Inams Act, 1955 has no application to unsurveyed land. Neither of them has explained how land which is unsurveyed is waste land. These observations of 2nd and 4th respondent are not supported by any evidence, clearly without any jurisdiction and vitiate their respective orders.

67. Therefore points (a) and (b) are answered in favour of the petitioners and against the respondents.

Point No.(c):-

68. It is the case of petitioners in the application dt.23-04-2007 filed by them before the 6th respondent under Section 87 of the Act that their great grandfather Khaja Jalal was inducted into possession of land covered by old Sy.No.285 of Khanojiguda by grant of Muntakhab granted by the Nizam, that the old Sy.No.285 comprised of Ac.157.20 gts and twelve new survey numbers for an extent of Ac.100.15 gts were assigned and for the balance Ac.57.05 gts, no survey numbers were assigned. They pleaded that they were in continuous possession and enjoyment of the entire land of Ac.157.20 gts in Sy.No.285 for more than 100 years. They sought not only assignment of new survey number to the extent of Ac.57.05 gts but also registration of their names in the revenue records of the village.

69. The Assistant Director, Survey and Land Records, Ranga Reddy District (5th respondent) issued an inspection note dt.25-07-2008 (Ex.P3) stating that the land in old Sy.No.285 stands registered in the name of Khaja Jalal and that it is his patta land. On 27-11-2009, the 6th respondent issued copy of the inspection report stating that old Sy.No.285 consists of Ac.167.20 gts, that it is Pan Maktha land of Khaja Jalal on the basis of Wasool Baqui and that Ac.25.09 gts was the deficit area after taking into account the land for which new survey numbers 357 to 372 had been assigned. Subsequently, after survey, the gap area or unsurveyed area was found to be Ac.21.04 gts.

70. Since this land is prima facie inam land, it is open to the petitioners to approach the competent authority under AP (Telangana Area) Abolition of Inams Act, 1955 for grant of an Occupancy Right Certificate and after obtaining the same, they can seek for mutation of their names in the revenue record by making an application in Form 6A prescribed under the AP Rights in Land and Pattedar Passbooks Act, 1971.

71. Coming to the claim of the 8th respondent Cantonment Board is concerned, the correspondence dt.29-06-1937, 06-07-1937, 09-08-1937, 20-08-1937, 06-10-1937, 29-07-1938, 31-12-1938, 17-07-1940 filed along with the counter affidavit suggest that an extent of Ac.32.72 gts between Khanojiguda and Hasmathpet was allegedly acquired by the then Nizam

Government and handed over to 8th respondent for trenching purposes. This area therefore cannot be within Khanojiguda and has to be outside it since it is alleged to be between Khanojiguda and Hasmathpet.

72. Secondly the letters dt.29-06-1937, 06-07-1937 and 09-08-1937 appear to have been drafted on stationery printed in the year 1944. Prima facie they are dubious.

73. Thirdly, if any land was to be acquired for the benefit of the Cantonment Board, the provisions of Section 110 of the Cantonment Act, 1924 as amended and substituted by Act 24 of 1936 which is extracted below is not shown to have been followed.

"Section 110 - Acquisition of immovable property:

When there is any hindrance to the permanent or temporary acquisition upon payment of any land required by a (Subs. by Act 24 of 1936, S.69, for "Cantonment Authority".) [Board] for the purposes of this Act, the2[Subs. By the A.O.1937, FOR "l.g." (Central Government) may, at the request of the (Subs. by Act 24 of 1936, S.69, for "Cantonment Authority".) [Board], (Subs., ibid., for "proceed to acquire it".) [procure the acquisition thereof] under the provisions of the Land Acquisition Act, 1894, and on payment by the (Subs. by Act 24 of 1936, S.69, for "Cantonment Authority".) (Board) of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the (Subs. by Act 24 of 1936, S.69, for "Cantonment Authority".) [Board]. No proceedings of acquisition of any land have been filed by the 8th respondent to prove that there was any such acquisition.

74. Also the boundaries of the extent of Ac.32.72 gts are not indicated anywhere. Most of the official correspondence during the regime of the Nizam was conducted in Urdu language and not in English language, but the above correspondence is in English language which also throws a doubt on the genuineness of the above documents.

75. As rightly pointed out by the learned counsel for the petitioners the prevailing currency at the time of the Nizam's Rule was Osmania Sikka but not Indian Rupees, but the proceeding dt.29-07-1938 and 17-07-1940 mention the currency as H.S.Rupees 8003-13-0. The said payment was allegedly made

by cheque, but no cheque number or name of the bank is mentioned. These circumstances throw any amount of doubt over the genuineness of the claim of the 8th respondent to the above land.

76. It is not disputed that counter affidavit had been filed on behalf of 8th respondent in W.P.No.12509 of 2004 (filed against it by one Lt.Col. (Retd.) N.K.Yadav) and an affidavit was filed by its Executive Officer A.S.Raja Gopal in W.P. No.17697 of 1989 (filed by M/s. Railway Employees cooperative Housing Society Limited) asserting that the trenching land is in Sy.No.1 of Hasmathpet village and not in Khanojiguda village.

77. This admission of the 8th respondent is fatal to its claim that the unsurveyed extent of Ac.21.04 gts in old Sy.No.285 of Khanojiguda is the land which was in its occupation and which was being used as a trenching ground.

78. Therefore, point (b) is answered holding that petitioners can approach the competent authority under AP (Telangana Area) Abolition of Inams Act, 1955 for grant of an Occupancy Right Certificate and after obtaining the same, they can seek for mutation of their names in the revenue record by making an application in Form 6A prescribed under the AP Rights in Land and Pattedar Passbooks Act, 1971. The claim of 8th respondent to the unsurveyed extent of Ac.21.04 gts in old Sy.No.285 of Khanojiguda (new.Sy.No.606), is rejected.

79. The Writ Petitions are accordingly allowed to the above extent; proceedings in letter Rc.No. N1/5213/2010 dt.27-09-2010 of 2nd respondent and proceedings in letter Rc.No.A1/963/2007 dt.25-05-2011 of 4th respondent except to the extent they held that Ac.21.04 gts. in old Sy.No.285 of Khnannojiguda should be given new Sy.No.606 are set aside; costs of Rs.5,000/- (Rupees Five Thousand only) each shall be paid by Respondent No.1 and Respondent No.8 to the petitioner."

23. It is well settled in law that in a summary proceeding under Article 226 of the Constitution of India, the disputed

questions of fact cannot be adjudicated (see **Rashid Wali Beg vs. Farid Pindari**¹).

24. The learned Single Judge has recorded a finding that the letters dated 29.06.1937, 06.07.1937 and 09.08.1937 are drafted on stationery printed in the year 1944 and held that they are *prima facie* dubious. It has further been held that in the proceedings dated 29.07.1938 and 17.07.1940, the payment was made in Hali Sicca rupees for a sum of Rs.8003-13-0. The learned Single Judge has further recorded a finding that the aforesaid currency was not in existence. It is pertinent to note that the aforesaid findings of fact could not have been recorded in a summary proceeding under Article 226 of the Constitution of India. The material has been placed on record *prima facie* to indicate that currency, namely Hali Sicca, existed at the relevant point of time.

25. The learned Single Judge ought to have appreciated that copy of Munthakhab was not produced before it. In the

¹ (2022) 4 SCC 414

absence of Munthakhab, namely the document of title, the learned Single Judge erred in adjudicating the questions of fact in summary proceeding under Article 226 of the Constitution of India. It is pertinent to note that the respondent Nos.1 to 4 or their predecessors who were granted Munthakhab have not filed any Appeal under Section 9 of the Andhra Pradesh Survey and Boundaries Act, 1923. When a re-survey was conducted in the year 1948, subject land of Ac.21.04 guntas was not allotted any survey number. The learned Single Judge ought to have appreciated that after 60 years, the respondent Nos.1 to 4 have submitted a representation seeking survey to be conducted and for allotment of new survey number. In the facts and circumstances of the case, the learned Single Judge erred in recording the findings of fact in a summary proceeding under Article 226 of the Constitution of India. Therefore, the common order dated 09.08.2016 passed in W.P.Nos.6890 and 6909 of 2012 is set aside.

26. However, in the facts and circumstances of the case, the parties are granted liberty to approach the civil Court, for redressal of their grievance as disputed questions of fact cannot be adjudicated in a summary proceeding under Article 226 of the Constitution of India. It is clarified that observations/findings recorded in this order have been made/recorded only for the purposes of deciding the controversy involved in this appeal and shall have no bearing on the civil suit, which may be instituted by the parties.

27. Accordingly, the Writ Appeals are disposed of. There shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

//TRUE COPY//

SD/- M. MANJULA
DEPUTY REGISTRAR

SECTION OFFICER

- To,
1. The Principal Secretary, Revenue Department, State of Telangana, Secretariat Buildings, Hyderabad.
 2. The Commissioner,, Survey, Settlement and Land Records, State of Telangana, Narayanaguda, Hyderabad.
 3. The District Collector and Magistrate,, Ranga Reddy District, Lakadikapool, Hyderabad.
 4. The Joint Collector,, Office of District Collector, R.R.District, Ranga Reddy District, Lakadikapool, Hyderabad.
 5. The Assistant Director,, Survey, Settlement and Land Records, 0/0 Collector Complex, R.R.District, State of Telangana, Lakadikapool, Hyderabad.
 6. The District Revenue Officer,, 0/o District Collector, R.R.District, Lakadikapool, Hyderabad.
 7. The Tahsildar,, Malkajiri Mandal Neredmet, Ranga Reddy District, Secunderabad.
 8. One CC to Sri K. R. Koteswara Rao, Advocate(OPUC)
 9. One CC to Sri P. Raghavendra Rao, Advocate(OPUC)
 10. One CC to Sri T. Vijay Hanuman Singh, Advocate(OPUC)
 11. One CC to Sri D. V. Ramana Sarma, Advocate(OPUC)
 12. Two CD Copies

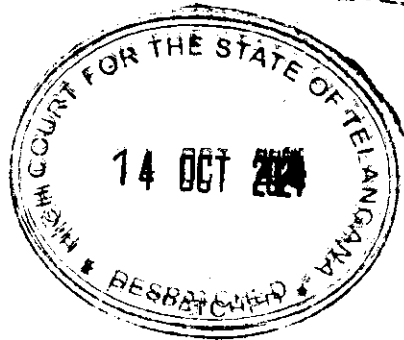
MBC

HIGH COURT

DATED: 11/07/2024

COMMON JUDGMENT

WA NOS: 933 AND 979 OF 2016



DISPOSING OF THE WRIT APPEALS

WITHOUT COSTS

14
MND
10/7/2024