REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 15571-15572 OF 2017
(ARISING OUT OF SLP (CIVIL) NOS. 18755-18756 OF 2013)

KSB ALI .....APPELLANT(S)

VERSUS

STATE OF ANDHRA PRADESH & ORS. .....RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 15576-15578 OF 2017
(ARISING OUT OF SLP (CIVIL) NO. 27299-27301 OF 2013)

CIVIL APPEAL NO. 15582 OF 2017
(ARISING OUT OF SLP (CIVIL) NO. 27434 OF 2013)

CIVIL APPEAL NO. 15579-15581 OF 2017
(ARISING OUT OF SLP (CIVIL) NOS. 27561-27563 OF 2013)

CIVIL APPEAL NOS. 15583-15585 OF 2017
(ARISING OUT OF SLP (CIVIL) NOS. 38018-38020 OF 2013)

CIVIL APPEAL NOS. 15586-15588 OF 2017
(ARISING OUT OF SLP (CIVIL) NOS. 38022-38024 OF 2013)

CIVIL APPEAL NO. 15589 OF 2017
(ARISING OUT OF SLP (CIVIL) NOS. 38025 OF 2013)

CIVIL APPEAL NOS. 15591-15596 OF 2017
(ARISING OUT OF SLP (CIVIL) NOS. 9996-10001 OF 2015)

CIVIL APPEAL NO. 15598 OF 2017
(@ SLP (CIVIL) NO. 26494 OF 2017
@ SLP (CIVIL) NO… CC1639 OF 2016)

CIVIL APPEAL NOS. 15573-15575 OF 2017
(ARISING OUT OF SLP (CIVIL) NOS. 19156-19158 OF 2013)

CIVIL APPEAL NO. 15597 OF 2017
(@ SLP (CIVIL) NO. 26493 OF 2017
@ SLP (CIVIL) NO….CC1132 OF 2016)

A N D

CIVIL APPEAL NO. 15590 OF 2017
(ARISING OUT OF SLP (CIVIL) NO. 1298 OF 2015)

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

2) Nawab Nusrat Jung Bahadur-1 (Nusrat Jung-I) had purchased 1635 acres and 34 guntas of land in Kotham Kunta, also known as Asad Nagar, which is now renamed as Kokapet village. This land was purchased way back in 19th Century, while sale deed was registered sometime in the year 1852. Nusrat Jung-I died issueless in 1875 and his widow also died thereafter on 10th October, 1916. Nusrat Jung-I had two cousins, Nawab Ghulam Hussain and Nawab Mohd. Sardar. Disputes about the aforesaid

land (hereinafter referred to as the 'subject lands') erupted almost 70 years ago and after protracted litigation, which is having chequered history, the said disputes have finally landed in this Court. Hundreds of persons claiming themselves to be the successors in interest of Nusrat Jung-I have led their claim on the subject lands. On the other hand, the state of Andhra Pradesh claims that it is the State which is the legal owner of the property in-question.

3) As mentioned above, these appeals have long history which has been taken note of, *in extenso,* by the High Court in its impugned common judgment dated 18th July, 2012, whereby number of writ appeals have been decided. As the impugned judgment records the chronology of the relevant facts correctly and no mistake is pointed out by any of the counsel appearing before us in regard to factual narrative, we can conveniently and safely reproduce these facts from the said judgment.

FACTUAL EVENTS IN BRIEF:

3.1 Under a sale deed dated 17th Rabi Awal, 1269 H (1852 A.D.) Nusrat Jung-1 purchased the schedule property, of an extent of Ac.1635.35 gts., from the vendors, the five sons of Mir Jouhar Ali

khan, son of Mir Hussain Ali Khan alias Asad Nawaz Jung (late), the wives of Mir Jouhar Ali Khan – Imtiazunissa Begum, Hayatunissa Begum and the daughters of Riazunissa Begum (the wife of Mir Asad Nawaj Jung) – Navrooz Begum and Moula Begum. The property then known as Koutham Kunta and thereafter as Asadnagar is presently Kokapet village.

3.2 Nusrat Jung-1 died issueless around 1875 leaving behind the widow – Rahimunnisa Begum, who died on 10-10-1916. Nusrat Jung-1 had two paternal first cousins – Nawab Gulam Hussain and Nawab Md. Sardar.

3.3 On 16th January, 1916 the entire properties of late Nusrat Jung-1 were taken over by Sarf-e-Khas Mubarak (the private secretariat of the Nizam) for supervision. A judicial branch of Sarf-e-Khas Mubarak initiated succession inquiry which was later transferred to the Court of Nazim Atiyat which was constituted under provisions of the 1952 Act.

3.4 In 1920 the heirs of Nusrat Jung-I represented to the Nizam for grant of Kokapet Jagir in their favour. By a Firman dated 15thJamadeeussani–1339–H, the Nizam decreed rejection of the representation and granted only maintenance allowance, on compassionate grounds.

3.5 In 1949, Jagirs were abolished under the Abolition of Jagirs Regulation and in 1359F the A.P. (T.A.) Jagirs (Commutation) Regulation was enacted providing for interim allowance payable, determination of commutation and abolition of Jagirs. Then followed the 1952 Act, providing for Atiyat enquiries.

3.6 The Atiyat Court to which inquiry was transferred, as pointed out above, by its order, dated 15-02-1954 held that lands in Kokapet village deserve to be confirmed as Madad-e-Maash (grant-in-aid) in favour of heirs of the late Nusrat Jung-1; that though the land enjoyed by the holders as Madad-E-Maash was subsequently constituted into a separate village; the Maash (the property) will be deemed to have been continued only as Arazi (inam lands), is confirmed as such and Kokapet was regarded as a village only for administrative purposes.

3.7 The Atiyat Court also held that Kokapet was taken over by the Government under the Abolition of Jagirs Regulation; this action was not challenged by Maashadars and the question of appointing Qabiz for lands included in the village does not arise. In respect of the lands in Bagh-e-Asifnagar (another village having lands of Nusurat Jung-1), the Atiyat Court held that each of Maashadars (holders of the property) is entitled to his respective share and the extents being small the Collector should

formulate proposals for disposal of lands by sale or otherwise after obtaining permission from the Government; should dispose of the same and distribute the money among the Maashadars.

3.8 Gulam Mohammed and another, aggrieved by the decision of the Atiyat Court dated 15th February, 1954 preferred an appeal to the Board of Revenue, which was rejected by the order dated 24th September, 1954 and the order of the Atiyat Court was upheld. The order of Atiyat Court was placed before the Revenue Minister in the form of a note and approved by him on 22nd December, 1954. The Muntakhab did not set out the number of Sendhi (excise) trees on the land and the claimants were therefore denied their consequent rights.

3.9 The claimants applied to the Assistant Nazim Atiyat for amendment of the Muntakhab (for inclusion of Sendhi trees). The application was rejected. Claimants then approached the Atiyat Court which also rejected their claim. They unsuccessfully approached the Board of Revenue and thereafter filed W.P.No. 227 of 1960. On 1st April, 1963 this Court allowed the writ petition and declared the claimants entitled to inclusion of income from Sendhi trees in the Muntakhab, directed the respondents to amend the Muntakhab and awarded Rs.3,980-4-0 as maash. In

the judgment in W.P.No.227 of 1960 the High Court however declined to grant the relief of restoration of the property.

3.10 One Mr. K.S.B. Ali (Mr. Ali) (claiming to represent 203 legal heirs of Nusrat Jung-1) approached the Government several times seeking release of lands covered by the Muntakhab in favour of the legal heirs.

3.11 Firoz Khan and another filed O.S.No.512 of 1973 (originally O.S.No.10 of 1967) for a declaration that they are the owners of the plaint schedule properties in survey Nos.41, 42 and 43 of Kokapet Village. J.H. Krishna Murthy and four others were impleaded as defendants in this suit. Krishna Murthy was impleaded as the GPA of the heirs of Nusrat Jung – I. Krishna Murthy through his written statement claimed entitlement to the lands on the strength of the GPA granted by the heirs of late Nusrat Jung – I and relied on the Muntakhab in support of the case of the defendants. The plaintiffs also prayed for a permanent injunction or in the alternative for recovery of possession of the suit lands.

3.12 By the judgment dated 30th June, 1976, the Trial Court considered the entire evidence and by an elaborately reasoned order decreed the suit. The Trial Court concluded that the stand taken by the defendants was incorrect and observed that the two

Firmans clearly established that the lands in question (Kokapet lands) were Jagir lands; that the legal heirs of Nusrat Jung – I had also admitted in cross-examination that some of them had filed applications for restoration of the Jagir lands to the Nizam which was rejected; that the first defendant (Krishna Murthy) had not produced any evidence to establish that the suit lands were acquired by Nusrat Jung – I under any purchase; and that the legal heirs of Nusrat Jung – I were entitled only to commutation amounts. This judgment became final as the appeal thereagainst by the defendants was dismissed by this Court by the judgment dated 11-12-1985 in C.C.C.A.No.142 of 1976.

3.13 170 persons claiming to be heirs of Nusrat Jung-1 filed W.P.No.20298 of 1993 for implementation of the Muntakhab as confirmed by the Revenue Minister's order dated 24th December, 1954 and for mutation of their names in respect of the lands in Kokapet village. Reliance was placed by the petitioners (apparently during oral hearing of the writ petition) on a letter dated 21-06-2000 addressed by the CLR to the Government expressing an opinion that the Muntakhab must be implemented. By the judgment dated 09-07-2001 a learned single Judge disposed of the writ petition directing the Government to consider the report of the CLR and take further action in accordance with

law, within six months. Thereafter several representations were made, including by Mr. Ali.

3.14 On 15th April, 2002 the Principal Secretary to Government, Revenue Department, considered the order of this Court (dated 09-07-2001 in W.P.No. 20298 of 1993) and rejected (by an elaborately reasoned order) the request of Mr. Ali for release of the lands as per the Muntakhab. By a subsequent Memo dated 6th May, 2004, however, the order dated 15th April, 2002 was withdrawn, again by the Principal Secretary to the Government. The Memo dated 6th May, 2004 records no reasons whatsoever for rescinding the earlier elaborate order and was issued pursuant to representation of Mr. Ali for reconsideration of his request, for implementing the Muntakhab. The Memo dated 6th May, 2004 merely states: Government after careful examination of the issue as per the Act and Rules in force, hereby withdraw the orders issued in the Government Memo 1stcited and the CCLA was directed to instruct the Collector, Ranga Reddy District and the concerned authorities to implement the orders of Atiyat Court issued in Muntakhab No. 57 of 1955.

3.15 A Memo dated 31-07-2004 reiterated the order dated 06-05-2004 and the CLR was directed to implement the earlier Memo dated 06-05-2004. In turn, the CLR on 07-10-2004 directed the

Collector, Ranga Reddy District to ensure communication of the Memo dated 31-07-2004 to the Mandal Revenue Officer, Rajendranagar for handing over possession of the open land as per the M.R.O.'s report dated 28-08-1984 and report compliance.

3.16 Vide Memo dated 21st May, 2005 and G.O. Ms. No. 1084 dated 6th June, 2005 the whole issue was revisited and the earlier memos dated 6th May, 2004 and 31st July, 2004. In this order (setting out elaborate reasons) it was concluded that the finding of the Atiyat Court (in its order dated 15-02-1954) (that Kokapet village was taken over by the Government under the Abolition of Jagirs Regulation and the said action was not challenged by the Maashadars and appointment of Qabiz for the lands included in the village does not arise), destroys the claim of the representationists, of the lands being Arazi Maktha; that according to provisions of the Abolition of Jagirs Regulation read with the Jagir (Commutation) Regulations 1359-F, Jagirdar/Makthadar or his successor on the date of taking over of Jagirs were entitled to only commutation amounts, excepting lands which were under direct and personal cultivation of the Jagirdars or their successors as home farm lands under Section 17 of the Abolition of Jagirs Regulation; that there are no home farm lands in the name of the claimants as per the revenue and

survey settlement records maintained from 1355-F (1945 AD); that open land would not fall within the definition of 'Home Farm Lands' as per provisio to Section 17 of the Regulation; that the Muntakhab was issued and acted upon by drawing commutation from the Nizam-e-Atiyat; and therefore there was no basis for any further claim in the matter. This Memo also concluded that the issue was finally decided by the 15-04-2002 order issued with approval of the competent authority; and that as the matter was finally decided, the subsequent orders dated 06-05-2004 and 31-07-2004 were without jurisdiction and competence.

3.17 Thereafter, tenders were issued by the Hyderabad Urban Development Authority for sale of Ac.100-00 in Kokapet village which was part of the subject lands and Mr. Ali filed W.P. No. 14439 of 2006 challenging the said tenders and sought a declaration that the said authority had no right in the property of the petitioners and the auction and sale process was illegal.

3.18 A learned single Judge on 14th July, 2006 dismissed the writ petition ruling that under Article 226 of the Constitution an inquiry as to questions of title in immoveable property cannot be considered and observed that the petitioner may approach the Civil Court for appropriate declaration and injunction.

3.19 Thereagainst W.A.No. 887 of 2006 was filed by Mr. Ali. This appeal was dismissed by a learned Division Bench of the High Court, by orders dated 26-10-2007, after contest. Though, SLP was filed thereagainst in this Court, the writ petitioner/appellant – Mr. Ali sought leave to withdraw W.P.No.14439 of 2006, W.A.No. 887 of 2006 and for rescinding the order in the writ petition and writ appeal. This request was granted by this Court with liberty to Mr. Ali to pursue "appropriate remedy", leaving the issues open.

3.20 However, after the aforesaid order of this Court (dated 13th December, 2007) several writ petitions were filed seeking reliefs already adverted to and these were tagged on to W.P.No. 10084 of 2006, earlier filed by Mr. Ali and were disposed of by the common judgment dated 02-06-2009 by a Single Judge of the High Court.

4) By the aforesaid common judgment dated 2nd June, 2009, the learned single Judge invalidated the memo dated 21st May, 2005 on the ground that it was in violation of principles of natural justice and directed the State to pass fresh orders after issuing notice to the writ petitioners enabling the petitioners to urge all the grounds before the State. The order in G.O.Ms.No.1084, dated 06-06-2005 was upheld with a caveat that as and when rights of the petitioners in respect of the property in question are determined in

their favour they may pursue remedies in this behalf. It was clarified that the judgment shall not be treated as a pronouncement or adjudication of any dispute or question involved in the matter and the legal representatives of Late Nawab Nusrat Jung Bahadur-I or their authorized agent are at liberty to pursue the matter with the Government; and that disputes, if any, among them (the legal representatives) could be agitated before a competent forum.

5) Challenging the aforesaid judgment of the learned Single Judge, writ appeals were filed primarily by the State of Andhra Pradesh as well as Hyderabad Metropolitan Development Authority (HMDA). It is significant to mention that as far as appellants in these appeals, who claim themselves to be the legal heirs of Nusrat Jung-I and rightful owner of the subject lands, are concerned, they did not challenge the order of the Single Judge in respect of those findings which had been rendered against them. Before we take note of the salient features of the decision rendered by the Division Bench it would also be apposite to remark that the core issue is as to whether the subject lands in Kokapet village belong to the State or it is the purported legal heirs of Nusrat Jung who are entitled thereto. The chronology of

events narrated above would also make it clear that the claimants have primarily rested their claim on the basis of the order dated 15th February, 1954 passed by the Atiyat Court[1] which held that the subject lands deserved to be confirmed as Madad-e-Maash (grant-in-aid) in their favour. They also argued that the aforesaid order had been approved by the Revenue Minister on 22nd December, 1954 and, thus, rights in their favour had got crystalised. As per them, it is the Atiyat Court which was competent to decide such a dispute and once the rights of the appellants were recognised by the Atiyat Court, the State Government was bound thereby. Further submission of the appellants was that memos dated 21st May, 2005 and G.O. dated 6th June, 2005, no opportunity of hearing was given to the appellants and, therefore, the said memo and G.O. were violative of principle of natural justice (which contention was accepted by the learned Single Judge as well).

ISSUE BEFORE THE HIGH COURT:

6) In the aforesaid circumstances, the Division Bench noted that the generic issue which fell for consideration was as to whether the learned Single Judge was right in invalidating the said Memo and

1 . Through Mr. Raghupati, Advocate appearing for some of the appellants has taken different stance before us, which is noted later at an appropriate stage.

G.O., thereby directing the Government to reconsider the issue after affording an opportunity to the appellants herein. It was because of the reason that insofar as that part of the decision of the learned Single Judge, rejecting substantive reliefs, namely, implementation of the Muntakhab, mutation of their names in the Revenue records; restoration of possession of the subject lands and declining to invalidate G.O. dated 6th June, 2005 are concerned, the appellants herein never challenged that part of the order.

THE IMPUGNED JUDGMENT :

7) After taking note of the aforesaid generic issue which arose for consideration, the High Court, at the outset, discussed the validity of the direction issued by the learned Single Judge directing the Government to reconsider the issue after giving opportunity of hearing to the appellants. In this behalf, it noted that the seminal dispute was as to whether land in-question belonged to the legal heirs of Nusraj Jung-I or the State. Having regard to this nature of dispute, the High Court has concluded that such a dispute cannot be decided by the Government inasmuch as deciding the aforesaid *lis* between the parties is a judicial function and such a judicial power, as per our constitutional scheme, rests with the

courts and not the Executive. Therefore, order of the learned Single Judge remanding the matter to the Government for *de novo* consideration was of no legal consequence.

8) Thereafter, the High Court delineated various other issues which arose for consideration and discussed those issues at length and answered the same. A perusal of the judgment shows that deliberations were undertaken on the following questions:

   (i) What is the 'appropriate remedy' for Mr. Ali to pursue?

   (ii) Whether the impugned memo dated 21st May, 2005 is unsustainable for violation of principles of natural justice?

   (iii) What was the import and effect of memos dated 15th April, 2002, 6th May, 2005 and 31st July, 2004 as well as impugned memo dated 21st May, 2005?

   (iv) Who are the appellants?

9) Insofar as question no. (i) is concerned, in essence, it touched upon the *locus standi* of Mr. Ali to file the writ petition. The High Court noted that this Court vide orders dated 13th February, 2007 had disposed of the Special Leave Petition filed by Mr. Ali permitting him to withdraw the writ petition No. 14439 of 2006 filed by him in the High Court thereby setting aside the judgments of the High Court in the said writ petition as well as in the writ

appeal no. 887 of 2006 preferred thereagainst and had accorded permission to Mr. Ali 'to take appropriate remedy'. The High Court thereafter proceeded to discuss what would be meant by such 'appropriate remedy' which was accorded to Mr. Ali. In this process, the High Court referred to and relied upon judgment of this Court in ***BSNL vs. Telephone Cables Ltd.***[2] and made the following remarks on the said issue:

> "In the light of the above facts and circumstances: the substantial similarity of the two writ petitions (W.P.No.10084 of 2006 and 14439 of 2006); the conduct of Sri Ali in having withdrawn the writ petition while obtaining effacement of the elaborate and painstaking judgment in the writ appeal, without determination of the merits of that judgment by the Supreme Court; and then pursuing W.P.No.10084 of 2006 (a writ petition filed earlier to W.P.No.14439 of 2006), constitutes in our considered view an abuse of the process of law; wanton litigative behaviour, pejorative to the larger public interest, involving casual and reckless commandeering of scarce judicial time. In the light of the observations of the Supreme Court in **BSNL**, Sri K.S.B. Ali must be held disentitled to pursue remedies under Article 226 of the Constitution in respect of the grievances presented in his earlier writ petition (W.P.No.14439 of 2006 and W.A.No.887 of 2006). We hold accordingly."

10) Insofar as question no. (ii) is concerned, which discussed the validity of the judgment of the Single Judge holding impugned memo to be unsustainable for violation of principles of natural justice, the High Court pointed out that through this memo the earlier memos dated 6th May, 2004 and 31st July, 2004 were

2 (2010) 5 SCC 213

rescinded. However, there was no question of giving any opportunity of hearing to the appellant because of the reason that memos dated 6th May, 2004 and 31st July, 2004 remained uncommunicated and, thus, did not confer or create any rights in favour of the appellants. Consequently, these could be withdrawn without notice, since no rights flew from uncommunicated order. For arriving at this conclusion, the High Court has extensively dealt with the provisions of Article 166(1) of the Constitution and the manner in which the aforesaid provision is dealt with by this Court in the following judgments:

(i) ***Dattatreya Moreshwar Pangarkar*** vs. ***State of Bombay***[3]

(ii) ***John*** vs. ***State of T.C.***[4]

(iii) ***MRF Ltd.*** vs***. Manohar Parrikar and others***[5]

11) Relying upon the aforesaid judgments, the High Court held that Business Rules framed under the provisions of Article 166(3) of the Constitution are mandatory in nature and have to be strictly adhered to. The High Court also took note of another judgment of this Court in ***Bachhittar Singh*** *v.* ***State of Punjab and another***[6] , on the basis of which it concluded that merely writing something on the file did not amount to an order and, therefore,

3 AIR 1952 SC 181
4 (1955) 1 SCR 1011
5 Vol IX(2010)SLT580
6 AIR 1963 SC 395

noting in the file by the Revenue Minister, without further action thereupon or issuing another order in the name of the Governor, as required by Article 166(1) of the Constitution, did not have any force in law. In the process, reference was also made to another judgment of this Court in ***Shanti Sports Club and another*** v. ***Union of India and others***[7] wherein this Court held that notings recorded in official files by officers of the Government at different levels even of Ministers, do not become decisions of the Government unless same are sanctified and acted upon by issuing an order in the name of the President or the Governor as the case may be, authenticated in the manner provided in Articles 77(2) and 166(2); and communicated to affected persons. The High Court also referred to many other judgments in support of its aforesaid finding.

12) Treating the aforesaid principle of law as binding precedents contained in the aforesaid judgments, the High Court concluded that none of the memos dated 15th April, 2002, 6th May, 2004, 31st July, 2004 and 21st May, 2005 would lawfully be considered as constituting Executive decisions/order of the State Government since they were not authenticated in the manner mandated by Article 166 of the Constitution. Further letter dated 6th April, 2004

7 (2009) 15 SCC 705

and memo dated 31st July, 2004 were, in any event, inoperable or inexecutable as they created no rights in favour of the appellants.

13) At the end, the High Court considered the status of the appellants while answering the question 'who are the appellants?' Pointing out that all the aforesaid memos as well as impugned memo, flow out of representations made by Mr. Ali who claimed himself to be the sole representative of the legal heirs of Nusrat Jung-I, the High Court has examined the locus of Mr. Ali to espouse the cause of others and found that he could not produce anything on record to show as to how he was authorised to plead the case of the purported legal representatives or the heirs of Nusrat Jung-I. The High Court further noted that other writ petitions were filed, by other appellants, for implementation of memos dated 6th May, 2004 and 31st July, 2004 which memos were issued only on the basis of Mr. Ali's representation. Therefore, none of the other appellants could legitimately assert a grievance that impugned memo was issued without notice or opportunity to them. According to the High Court, there was absence of clarity as to whether Mr. Ali and or the other writ petitioners were even the legal heirs of Nusrat Jung-I or were lawfully authorised to represent any legal heirs and, therefore,

none of the appellants had any *locus* to litigate.

14) After answering the questions in the manner stated above, the High Court has summarised the position as under:

"**SUMMARY OF OUR CONCLUSIONS:**

(a) Neither the State nor any Officer of the State, including the Principal Secretary or the Special Chief Secretary to the Government, Revenue Department is conferred judicial or quasi judicial jurisdiction, power or authority, either as Court, a Tribunal or a persona designata, to adjudicate disputed questions of title to immovable property, even where one of the competing claimants to such title is the State;

(b) Consequent on conclusion (a) supra, none of the instruments/decisions/orders dated 15-4-2002; 6-5-2004; 31-7-2004, or the impugned Memo dated 21-5-2005 (impugned in the writ petitions), could be considered as having efficacy or operative force as determinative or deprivatory of title in or entitlement to possession of immovable property of an extent of Ac.1635-34 guntas in Kokapet village of Ranga Reddy District, in favour of the State itself or any other private individual or individuals, including the writ petitioner and/or the non-official respondents in this batch of writ appeals;

(c) The decision/order in Memos dated 06-5-2004 and 31-7-2004 were not formally communicated to any of the writ petitioners including Sri K.S.B.Ali, the representationist at whose instance and on whose representation these Memos were issued;

(d) In the light of conclusion (c) above, the Memos dated 6-5-2004 and 31-7-2004, being uncommunicated administrative orders, are inoperative, inexecutable and sterile;

(e) The instruments/decisions/orders dated 15-4-

2002; 6-5-2004; 31-7-2004 or the impugned Memo dated 21-5-2005 not having been expressed or authenticated in the manner ordained by Article 166 (1); or established to have been decisions taken at the specified level of authority, in accordance with the Rules of Business issued by the Governor of the State under Article 166 (2) and (3), cannot be regarded as orders issued by the State in exercise of its executive power under Article 162 of the Constitution;

(f) Consequent on conclusions (a) to (e) above, the impugned Memo dated 21-5-2005 is not susceptible to invalidation by this Court in exercise of its power of judicial review under Article 226 of the Constitution. Since the impugned Memo rescinds uncommunicated and inoperative Memos dated 6-5-2004 and 31-7-2004, violation of the audi alterem partem principle (even if applicable in the facts and circumstances of the case), is of no legal consequence and would not result in resuscitation of the unauthorized and sterile memos dated 6-5-2004 and 31-7-2004;

(g) Having withdrawn W.P.No.14434 of 2006 and obtained invalidation of the judgment in the said writ petition and in W.A.No.887 of 2006, in SLP (Civil) No. 23392 of 2007, by the order of the Hon'ble Supreme Court dated 31-7-2007, while obtaining permission "to take appropriate remedy", Sri K.S.B.Ali is disentitled either to file another writ petition for the same relief as in W.P.No. 14434 of 2006 or to pursue the pending writ petition No. 10084 of 2006, as this would not be an appropriate remedy; and pursuit of public law remedy by Sri K.S.B.Ali, for substantially the same grievance as in the earlier abandoned proceedings constitutes an abuse of process of the Court; and

(h) Neither has Sri K.S.B.Ali established by specific pleadings nor by due authorization on record that he is authorized to represent the cause of 203 legal heirs of Nusrat Jung-I; nor have the other petitioners pleaded or established the basis for

their claims, to be the heirs of Nusrat Jung-I.

(i) In view of the foregoing analyses, for the afore-stated reasons and in the light of our conclusions supra, the common judgment dated 02.06.2009 in W.P.Nos.10084 of 2006; 22619 of 2007; 3421, 7747, 8761 and 12928 of 2008; 3750 and 6425 of 2009 is set aside and the several writ appeals are allowed, with costs; and for reasons alike W.P.No.29063 of 2009 is dismissed and with costs."

15) On behalf of the appellants, arguments were mainly advanced by Mr. Ali, who appeared in-person and Mr. V.N. Raghupathy, Advocate who argued on behalf of some other appellants. The entire thrust of Mr. Ali's argument was on the order passed by the Atiyat Court and his submission was that as per these orders, the appellants were held to be owners of the subject lands, as legal heirs of Nusrat Jung-I. Atiyat Court was having requisite jurisdiction to decide this *lis* and its decision had not only attained finality, it was accepted by the Finance Minister as well. Therefore, the same was binding on the State Government. Mr. Ali, in addition, submitted that special express powers invested in this Court to go into these issues by virtue of Article 323B of the Constitution. He, thus, contended that this Court should enforce the order of the Atiyat Court which was a decree under the Atiyat Act, 1952, which was a special Act and displaced the jurisdiction of the Civil Court. Number of

judgments was cited in support of the aforesaid proposition.

16) Mr. Raghupati, on the other hand, argued that the inquiry into succession started on 7th August, 1905. This property is a Royal gift prior to Ashifsahi dynasty and the sale deed of 1852 contains a recitle that this property is exclusion (Kharij – jama) for ever for themselves from every respect of control of Civil Government of Nizam ul-mulk Asif Jah on the 14 day of Jamadi-Al-Awal 1240 H and there is certificate for exclusion from the Government (Diwani) i.e. Revenue Department (Sanad-E-Mafee, i.e. Royal Waver (no PAC/CESS). After the demise of Nusrat Jung Bahadur-I, the enquiry has started on 17th August, 1905 with regard to succession only. Circular 10 of 1338 Fasli came into force during the pendency of enquiry. It was also argued that according to Section 15(b) of Atiyat Enquiry Act, 1952, it is circular 10 of 1338 that applies to pending enquiry of Inam and Succession enquiry. Hence, the Atiyat Enquiry Act, 1952 has no application. Under Section 9 of circular 10, the Government should have initiated action to avoid this Muntakhab. Since it failed to do so, the Muntakhab attained finality. Muntakhab was granted by Nazim Atiyat after obtaining approval from Revenue Minister under Section 8(e) of circular 10 of 1338F. Thus, the Muntakhab is valid document and its validity has not been

contested in the writ petition. It was further submitted that prior to Land Revenue Act, 1317, certain rules were in force which continued to be in force under Section 1(2) of Land Revenue Act, 1317 Fasli.

17) Mr. Raghupati also submitted that temporary attachment of the subject lands under Section 110 of Land Revenue Act, 1317(f) was of no consequence and it could not divest the onus from their ownership. He also laid stress on the approval granted by the Revenue Minister on the basis of which Muntakhab was granted. He argued that it was done after following due procedure. Reference was made to the judgment of this Court in ***State of Andhra Pradesh*** v. ***P. Hanumantha Rao (Dead) Through LRs. and others***[8] wherein it was held, thus:

> "33. No doubt, it was held that neither in exercise of the power of writ under Article 226 nor in supervisory jurisdiction under Article 227, the High Court will convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence. The power of the High Court in writ jurisdiction to interfere where important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied has been recognised even in the case of *Sawarn Singh* [(1976) 2 SCC 868 : AIR 1976 SC 232] on which strong reliance was placed on behalf of the State. The relevant observations are:
>
> > "*13*. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is

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> legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law."
>
> xxx xxx xxx
>
> 35**.** With the growing menace of land-grabbing, the Act of 1982 constitutes Special Courts and ousts jurisdiction of the regular civil courts in respect of land alleged to have been grabbed. Where the regular remedy provided by general law is ousted by special law, the provisions of the latter deserve to be construed strictly. We have examined the scheme and object of the Act and examined its relevant provisions. When an occupant of the land is alleged to be a "land-grabber", he has to justify his possession and prove his source of title. Where source of title by an occupant is produced, the Special Court is required to examine it to consider whether on the basis of evidence of title produced by him, he can be held to be not falling in the definition of "land-grabber" under clause (*d*) of Section 2 of the Act. In the present case, the occupants had produced documents to prove their source of title and long possession of their predecessor-in-title being the original grantee under a *muntakhab* issued by the Ruler of the erstwhile Nizam State. This title deed with revenue entries based on them produced by the occupants should have been treated sufficient for the purposes of the Act to treat the occupants of the land to be falling outside the definition of "land-grabber". It is not a case where the occupants have tried to justify their possession on the basis of a mere bona fide claim to the land. They have produced oral and documentary evidence on the *muntakhab* and justified their possession as alienees from the heirs of the original grantees."

18) The learned counsel appealing for the State of Telangana and Hyderabad Metropolitan Development Authority (HMDA) strongly refuted the aforesaid submissions in an attempt to

persuade this Court to uphold the impugned judgment of the High Court. It was his submission that the High Court had rightly questioned the locus of Mr. Ali and even before this Court, he could not point out as to how he was competent to espouse the present litigation and represent the so-called legal heirs of Nusrat Jung-I. It was also argued that the appellants had no right to even make their submissions on merits as they had not challenged the order of the Single Judge refusing to grant them relief. The issue before the Division Bench, in the appeals filed by the State and HMDA, only related to the directions given by the Single Judge to the Government to take a view after giving hearing to the appellants and the High Court in the impugned judgment had considered the aforesaid aspect, accepting the plea of the State and allowing its appeals. Therefore, argued the learned counsel, that issue decided in the impugned judgment could be the only subject matter of these appeals.

19) After considering the respective submissions, we find ourselves in agreement with the contentions advanced by the learned counsel for respondent. There are various reasons to dismiss these appeals, which are discussed herein below:

20) In the first place, it is to be noticed that as far as Mr. Ali is

concerned, his writ petition no. 10084 of 2006 which was filed in the High Court after passing of the order dated 31st July, 2007 in SLP(C) No. 23392 of 2007 by this Court, was not maintainable. This Court, by the said order, had permitted him to withdraw his writ petition no. 14434 of 2006 and 'to take appropriate remedy'. Obviously, the remedy could not be in the form of another writ petition on the same facts and grounds which were pleaded earlier. The High Court has rightly held that having given up his pursuit of public law remedy in earlier abandoned proceedings, filing of the fresh writ petition or pursue pending writ petition no. 10084 of 2006 would constitute an abuse of the process of the Court.

21) Secondly, the High Court is also right in holding that neither Mr. Ali had established by specific pleadings nor by due authorisation on record that he was authorised to represent the case of 203 legal heirs of Nusrat Jung-I. It is clear from the above that insofar as Mr. Ali is concerned, his appeals are not even maintainable.

22) Thirdly, the High Court has specifically remarked, and rightly so, that even the other appellants did not plead or establish the basis of their claims that they are the heirs of Nusrat Jung-I.

As pointed out above, the High Court has discussed the *locus* of these appellants (writ petitioners in the High Court) under the caption 'who are the writ petitioners?' At this juncture, it would be apt to reproduce the entire discussion in this behalf which compelled the High Court to observe that entirely chaotic and incoherent state of facts were pleaded by all these writ petitioners in their writ petition since we are in agreement with the High Court's analysis. Relevant portion of the impugned judgment, in this behalf, is as under:

> "There is another significant but piquant and incomprehensible circumstance in this lis. The initial order dated 15-04-2002, the subsequent orders dated 06-05-2004 and 31-07-2004 and the impugned memo, all flow out of representations made by K.S.B. Ali claiming to be the sole representative of the legal heirs of Nusrat Jung – I.
>
> The letter dated 15-04-2002 refers to W.P.No.20298 of 1993 filed by Mirza Agha Mohammed Ali and 169 others (seeking implementation of the Muntakhab). These petitioners claimed to be the successors-in-interest of Nusrat Jung – I. By the judgment dated 09-07-2001, this Court declined to go into the details of the case and directed the Government to consider the report of the CLR and take further action in accordance with law. The letter dated 15-04-2002 also refers to a representation dated 04-08-2001 by Moizuddin Mahamood (also the petitioner in W.P.No.22619 of 2007); and another from K.S.B. Ali, claiming to be the sole representative of the legal heirs of Nusrat Jung – I. Qua this letter (dated 15-04-2002) the representation of K.S.B. Ali was rejected. The memo dated 06-05-2004 was issued on the basis of a representation dated 06-01-2003 and further representations, only by K.S.B. Ali claiming to be the sole representative of the legal heirs, seeking

implementation of the Muntakhab and reconsideration of the order dated 15-04-2002. The basis for the memo dated 31-07-2004 is the same as it is for the memo dated 06-05-2004, i.e., representations by K.S.B. Ali. It is equally not clear by what authority K.S.B. Ali claimed or continues to claim, to represent all the legal heirs of Nusrat Jung – I; and if he is a lawfully authorized representative, whether the 170 petitioners (in W.P.No.20298 of 1993) are persons who additionally claim to be the heirs or these petitioners are renegade legal heirs who have dis-associated from K.S.B. Ali. Neither a power of attorney nor an authorisation signed by persons asserting to be legal heirs of Nusrat Jung – I nor the names and particulars of the legal heirs whose representative Sri K.S.B. Ali claims to be nor even the legal basis for the claim to be their representative, is on record.

We have earlier in the narrative herein noticed that the 1st defendant in O.S.No.512 of 1973 was one J.H. Krishna Murthy, who in his written statement therein claimed to be the GPA of the heirs of late Nusrat Jung – I. In that capacity he had also though unsuccessfully preferred the appeal C.C.C.A.No.142 of 1976. When Sri K.S.B. Ali supplanted J.H. Krishna Murthy, as the authorized legal representative of the heirs and by what authority, is neither pleaded nor clarified.

W.P.No.9551 of 2004 was also by K.S.B. Ali claiming to be the sole representative of the heirs of Nusrat Jung – I. The grievance in this writ petition was non-communication of the memo dated 06-05-2004 to the District Collector and MRO and for implementation of the order of the Atiyat Court. This writ petition was disposed of at the admission stage directing communication of the memo dated 06-05-2004 to respondents 2 to 4 therein. Sri Ali did not plead in this writ petition that the Memo dated 06-05-2004 was communicated to him.

W.P.No.14439 of 2006 was again by K.S.B. Ali alone claiming that he and a large number of (203) persons are the legal heirs of Nusrat Jung – I. The proposals for sale of 100 acres in Kokapet village by the HUDA was challenged in this writ petition and title to the said extent as part of the schedule property was claimed by the petitioner K.S.B. Ali, as the sole representative of

the legal heirs of Nusrat Jung – I. On what basis Ali claimed to be the heir of Nusrat Jung – I and/or to be authorized to represent all the legal heirs is not clear. No foundational facts are pleaded nor any material furnished to infer with certitude the claim of Sri Ali to represent the legal heirs of Nusrat Jung – I or the claims of the other writ petitioners to being the legal heirs (of Nusrat Jung – I) and hence to having a litigable interest in the schedule property. Against the dismissal of this writ petition (with liberty granted) to pursue declaratory and injunctory reliefs before the Civil Court, K.S.B.Ali preferred writ appeal No.886 of 2006. The appeal was dismissed by the judgment dated 26-10-2007. K.S.B. Ali appealed to the Supreme Court by Special Leave, pleaded for withdrawal of W.P.No.14439 of 2006. By the Order of the Supreme Court, dated 13-12-2007, the judgments in W.A.No.887 of 2006 and W.P.No.14439 of 2006 were set aside and writ petition dismissed as withdrawn; the issues were left open and the appellant Ali was preserved the liberty “to take appropriate remedy”.

Coming to the several writ petitions and the common judgment therein (wherefrom the present appeals arise), as already noticed, W.P.No.10084 of 2006 is again by K.S.B.Ali, claiming to represent 203 legal heirs of Nusrat Jung – I. W.P.No.22619 of 2007 is by the sole petitioner Moizuddin Mahamood, one of the representationists referred to in the order dated 15-04-2002. It does not appear that the memos dated 06-05-2004 and 31-07-2004 were issued on the basis of the representations by this gentleman – Moizuddin Mahamood. W.P.No.3421 of 2008 is by Malik Sultana and 21 others; W.P.No.7747 of 2008 is by Ghouse Mohiuddin Siddiqui; W.P.No.8761 of 2008 is by 13 petitioners; W.P.No.12928 of 2008 is by 9 petitioners; W.P.No.3750 of 2009 is by 117 petitioners; and W.P.No.6425 of 2009 by 20 petitioners. If K.S.B.Ali is the sole representative of all the legal heirs of Nusrat Jung – I, it is not clear who the other writ petitioners are or on what basis they claim to be so. Except K.S.B. Ali and Moizuddin Mahamood and the writ petition filed by Mirza Agha Mohammed Ali and 169 others, there is no reference to any other claimants to the schedule property even in the letter dated 5-04-2002, whereby the representation of K.S.B.Ali was rejected. The subsequent memos dated 06-05-2004

> and 31-07-2004 directing implementation of the Muntakhab were issued only on the basis of K.S.B. Ali's representation and these orders rescinded by the impugned memo dated 21-05-2005. Neither the 170 petitioners (whose W.P.No.20298 of 1993 was referred to in the letter dated 15-04-2002) or Moizuddin Mahamood whose representation dated 04-08-2001 was also referred to in this letter (rejecting K.S.B.Ali's representation for implementation of the Muntakhab and restoration of possession of the schedule property), have ever challenged the decision dated 15-04-2002. Neither did Sri K.S.B. Ali.
>
> Since neither the memos dated 06-05-2004 and 31-07-2004 nor the re-calling of the orders in these memos by the impugned memo dated 21-05-2005 is at the instance of any other person except K.S.B. Ali, none of the other petitioners could legitimately assert a grievance that the impugned memo was issued without notice or opportunity to them and on the ground that any rights accrued to them under the memos dated 06-05-2004 and 31-07-2004 were extinguished by the impugned memo.
>
> In the chaotic and incoherent state of facts adverted to above and absent any clarity as to whether K.S.B.Ali and/or the writ petitioners are the legal heirs of Nusrat Jung – I or lawfully authorized to represent any legal heirs; and since the writ petitions are founded on the assertion that the reliefs claimed are on the basis that the several petitioners (being successors-in-interest of Nusrat Jung – I) are entitled to restoration of possession of the schedule property; we do not consider it prudent or pragmatic that reliefs should have been granted to petitioners who have failed to plead and establish any litigative interest in the subject matter of the writ petitions; and therefore to a locus to litigate.

23) Fifthly, as pointed out above, the judgment of the learned Single Judge insofar as it was against the appellants, was never challenged by them by filing any writ appeal(s). It would be

pertinent to reproduce hereunder the conclusions of the learned Single Judge in its judgment dated 2nd June, 2009.

> "The writ petitions were allowed with the following directions:
>
> (a) the impugned memo dated 21-05-2005, is set aside, as violative of principles of natural justice;
>
> (b) the Government, in its Revenue Department, shall pass fresh orders, after issuing notice to the petitioners. It shall be open to the petitioners to urge all the grounds before the Government.
>
> (c) G.O.Ms.No. 1084, dated 06-06-2005, is upheld, however, with a rider that as and when the rights of the petitioners vis--vis the lands are determined in their favour, it shall be open to them, to pursue their remedies, in this regard;
>
> (d) This judgment shall not be treated as a pronouncement or adjudication of any dispute, or question, involved in the matter; and
>
> (e) It shall be open to the legal representatives of late Nawab Nursat Jung Bahadur-1, or their authorized agent, to pursue the proceedings before the Government, and the dispute, if any, among them, may be agitated before a competent forum.
>
> As is clear from the observations set out in direction (d) above, there was no adjudication or determination of any of the substantive disputes between the parties, particularly with regard to the vitality of the Muntakhab. These disputes are relegated for de novo consideration by the Government, and after notice to the petitioners."

The learned Single Judge had specifically clarified that his judgment was not to be treated as a pronouncement for adjudication of any dispute or questions involved in the matter

and disputes, if any, among them could be adjudicated before a competent forum. In view of the above, in the appeals filed by the State against the judgment of the Single Judge, the Division Bench was only called upon to decide as to whether the direction to relegate the matter to the State Government was proper or not. The High Court has decided that aspect in the impugned judgment. It is obvious that the appellants cannot rake up those issues in these appeals which are not decided either by the learned Single Judge or the Division Bench.

24) Sixthly, Insofar as the decision of the Division Bench on the issue raised before it is concerned, no arguments were even advanced by the appellants questioning the validity thereof. Even otherwise, having gone through the said judgment minutely, we are in complete agreement with the impugned judgement on those aspects, decided by the High Court. To recapitulate in brief it is stated that even the writ petition filed by the petitioners herein (writ petition no. 3421 of 2008) which *inter alia* sought to challenge memo dated 21st May, 2005 issued by the Revenue Department as illegal and also sought to implement Muntakhab No. 55 of 1955 dated 7th May, 1955, by mutating the names of the petitioners in the Revenue Records and return the custody of the

property was clearly not maintainable for two reasons. Insofar the memo dated 21st May, 2005, was concerned, the main grievance of the writ petitioners appears to be that the same had been passed without giving any notice to the writ petitioner and that the same could not have reviewed/rescinded the memos dated 6th May, 2004. The said arguments are not tenable on account of the fact that the impugned memo dated 21st May, 2005, only sought to reinforce the memo dated 15th April, 2002, issued by the Government in response to the representation made by Mr. Ali. Therefore, when the impugned memo dated 21st May, 2005 was admittedly not issued at the instance of the writ petitioners there could not have been any question of hearing them prior to the same. Further, neither the impugned memo nor the memo dated 6th May, 2004 (purporting to create rights in favour of the legal heirs of Nawab Nusrat Jung-I) was communicated to the writ petitioners. Hence, insofar as the memo dated 21st May, 2005 is concerned, no cause of action accrued in favour of the writ petitioners to have approached the High Court and, therefore, the only person, if any, who could have challenged the same was Mr. Ali. As far as Mr. Ali, is concerned, as already pointed above, he could not maintain the writ petition as it was not 'appropriate remedy' as granted by this Court.

25) For all these reasons, these appeals are dismissed. However, in the facts and circumstances of this case, we may refrain from awarding any costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI;
OCTOBER 4, 2017