

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF JULY 2000

BEFORE

THE HON'BLE MR. JUSTICE H.L. DATTU

WRIT PETITION NO. 27111/1995

BETWEEN:

The Horticulture Producers' Coopera-
tive Marketing and Processing Society Ltd.,
Hosur Road, Bangalore,
by its Managing Director.

... PETITIONER

(By Sri N. Krishnanda Gupta, Adv.)

AND:

1. The Competent Officer and Secretary
Karnataka Board of Wakfs,
No.6, Cunningham Road, Bangalore 52.
2. The Karnataka Board of Wakfs
Darul Awkaf,
No.6, Cunningham Road,
Bangalore 52,
rep.by its Secretary.
3. Dargah Hazrath Ataulla Shah &
Hazrath Nabi Shah, Commonly known
as 'Bada Makhan', situated at
H.Siddaih Road, Bangalore,
by its Administrator.

... RESPONDENTS

(By Sri K.N Phanindra, Adv. for
Sri D.L.N. Rao for R2,
Sri Basavaraj V. Sabarad, Adv. for
R3)

This W.P. is filed under Arts.226 &
227 of the Constitution of India, praying
to prohibit R1 from proceeding with the
case No.KDW/PP/1/BNU/95-96 by declaring
that the R1 being the Secy. of R2 who is

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also claiming right in schedule property cannot be a judge in its own case. etc.,

This W.P. having been reserved for Orders, this day the Court pronounced the following:

ORDER

The Horticulture Producers' Cooperative Marketing and Processing Society, is a society, registered under the provisions of Karnataka Cooperative Societies Act, 1959, (petitioner-Society herein for the sake of brevity referred to as the 'Hopcom'). The shareholders of the Society are mostly agriculturists and horticulturists. Apart from these persons, the State Government holds more than 90% of the shares in the petitioner-society. The primary object of the society seems to be, to supply fruits and vegetables through its retail outlets to its customers and also to establish processing units. The other incidental activity is to export fruits and vegetables to other countries outside the State. The society carries on its business activity in a structure erected on an immovable property bearing Sy.No.18, situate at Annipura village, on the eastern side of

Lalbagh Area, Bangalore, measuring an extent of 2 acres and 3 guntas of land. It claims and asserts that it is in possession and enjoyment of the aforesaid property from last two decades uninterruptedly and continuously to the exclusion of others including the true owners of the property in question.

2. In this petition filed under Article 226 and 227 of the Constitution of India, petitioner-society is seeking a writ of prohibition, prohibiting the first respondent from proceeding with case No.KDW/PP/1/BNU/95-96, on the sole ground that the first respondent being an officer of the second respondent - Karnataka Board of Wakfs, which is interested in a wakf institution cannot be an arbiter of its own cause. The second prayer is for a declaration, to declare that the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974, is not applicable to petition schedule property, since there is no declaration from a competent forum that the second and third respondent herein are the owners of

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schedule property.

3. The competent Officer and Secretary, Karnataka Board of Wakfs, is an officer appointed by the State Government by issuing a notification in exercise of its powers under Section 3 of the Karnataka Public Premises Eviction Act. It is this authority, who has issued the impugned show cause notice under subsection (1) of Section 4 of the Act, 1974, inter alia, directing the petitioner-society to show cause why an order of eviction should not be passed against it.

4. The Karnataka Board of Wakfs, the second respondent herein is a statutory Board constituted under the provisions of Wakf Act, 1954. The administrative control and management of all wakfs and wakf properties in the State of Karnataka is vested in it. The provisions of Section 15(1)(o) of the Wakf Act, enjoins the Board to do all such acts as may be necessary for the due control, maintenance and administration of wakfs. This respondent asserts that the property in dispute is

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wakf property, declared as such by a notification issued by the Board in exercise of its powers under Section 5(2) of the Wakf Act. The notification, it appears, is published in the Official Gazette dated 22.7.1965 and the property in question is shown at Sl.No.285 of the said notification.

5. Dargah Hazarath Ataula Shah and Hazrath Nabishah, commonly known as 'Bada Makhan' situate at H. Siddaiah Road, is a Muslim Charitable and Religious Wakfs Institution, holding several items of immovable properties at Bangalore. According to this respondent, the property is in unauthorised occupation of the petitioner-society belongs to its institution. It also states that it is a wakf institution and is governed by the provisions of Wakf Act, 1954 and also coming within the control, supervision and management by Karnataka Board of Wakfs, either by itself or through the body constituted by it. It is its specific case before all other forums and also before this Court that it is the absolute owner of

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the property in possession of the petitioner-society.

6. The cause of action for the petitioner-society to approach this Court for the reliefs indicated by me earlier is the petition filed by the third respondent institution before the second respondent Board, under Section 5 of the Act, 1974, for eviction of the petitioner-society from the premises in their unauthorised occupation, and secondly, the show cause notice issued by the competent officer under Subsection (1) of Section 4 of the Act, 1974. pursuant to the petition filed by the third respondent-Religious Institution. The show cause notice contains the ground on which the authority intends to exercise its statutory powers under the provisions of Act, 1974.

7. Sri N.K. Gupta, learned counsel for petitioner-society, in support of the reliefs sought in the writ petition, firstly contends that the show cause notice dated 18.5.1995, issued by the competent officer, who is supposed to be the

Secretary of the Karnataka Board of Wakfs has filed a suit in O.S.No.2745/1993 for declaration that the petition schedule property is a wakf property. Since the competent officer has personal interest in the property in possession of the petitioner-society, he cannot be judge of his own cause and therefore the initiation of eviction proceedings pursuant to the petition filed by the third respondent Wakf Institution is not only bad, illegal, invalid and is also hit by principles of official bias. To support this legal issue, the learned Counsel not only draws my attention to the pleadings in the Original Suit No.2745/93 but also to the communication of this respondent with the Registrar of Cooperative Societies, Bangalore, dated 6.8.1994, which is produced as Annexure-N1 along with the writ petition papers.

8. Per contra, Sri Phanindra, learned Counsel appearing for the first and second respondent submits that in view of the observations made by a bench of this Court in the case of INDIAN BANK -VS- M/S BLAZE

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AND CENTRAL (P) LTD., reported in ILR 1986 KAR 743, the legal issues canvassed by the learned Counsel for the petitioner-society is no more debatable. In aid of this submission, the learned Counsel draws my attention to para 9 of the judgment.

9. In the aforesaid case, one of the legal issues canvassed by the learned Counsel for the appellant therein was, since the estate officer appointed by the Central Government in exercise of the powers under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, is being an officer of the Bank, he cannot be a judge in his own cause and therefore, the eviction notice issued and the order passed by the estate officer are arbitrary and violative of rules of natural justice. This stand of the unauthorised occupant in the aforesaid case was accepted by the learned Single Judge and on an appeal filed against the order of the learned Single Judge, a bench of this Court while reversing the view expressed by the learned Single Judge, was pleased to observe as under:-

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"9. As regards the view taken by the learned Single Judge that the Estate Officer being an Officer of the bank he was Judge in his own cause and therefore the notice issued and the order passed were violative of rules of natural justice, it appears to us that when Section 3 of the Act authorises the appointment of an officer of a statutory body concerned as Estate Officer, and the officer so appointed alone is competent to issue notice under Section 4 and pass order under Section 5 of the Act, it would be a case of statutory exception to the applicability of the rules of natural justice. In such a case there is no scope for applying the rules of natural justice and to hold that he is disabled to issue the notice and pass the order of eviction, as rules of natural justice only supplement the law and do not supplant it. (see. Union of India -vs- J.N. Sinha). Debarring the Estate Officer from exercising his powers by applying rules of natural justice would result in the defeating of the provisions of the Act as there would be no officer who could issue notice under Section 4 or pass an order under Section 5 of the Act. Unless the provisions of the Act is challenged on the ground that it is unconstitutional for conferring power to inquire and order eviction from a public premises on an officer of the concerned public authority and the challenge is upheld, the order passed by the Estate Officer cannot be set aside on the ground that he was an officer of the public authority which intends to evict the person concerned. In fact the first respondent had questioned the constitutional validity of the Act which was left

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open by the learned Single Judge as the two other questions were answered in favour of the first respondent."

10. The Karnataka Public Premises Eviction Act defines the meaning of the expression 'competent officer'. It means an officer appointed as such by the State Government under Section 3 of the Act. Under this Section, the State Government by issuing appropriate notification may appoint in respect of its premises such officers not below the rank of Group 'B' officer of the State Civil Services. Secondly, in respect of any premises of a local authority, such officer of local authority. Thirdly in respect of any premises of a corporate authority, such officer of the corporate authority and in respect of any other premises, an officer of the State Civil Services or of any other authority as it thinks fit to be competent officers for the purpose of the Act.

11. The meaning of the expression 'Premises' and 'Public Premises' are defined under the Act. A public premises includes a public premises belonging to a

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wakf institution or religious charitable institution under the management of Karnataka State Board of Wakfs.

12. In the instant case, it is not in dispute that the first respondent is notified as competent officer by the State Government by issuing appropriate notification under Section 3 of the Act, 1974. The only grievance that the petitioner-society seems to be having against him is that, since he has filed a suit in OS.No.2745/1993 in his capacity as Secretary of the second respondent Board and since he has issued a notice to the Registrar of Cooperative Societies to advice the petitioner-society to deliver the vacant possession of the petition schedule property in their unauthorised occupation free from all encumbrances, he cannot be judge of his own cause. This contention in my opinion, in view of the observations made by a division bench of this Court, to which I have already adverted has no merit whatsoever. Secondly, the relief sought in OS.No.2745/93 is with regard to some other

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property and at any rate, does not pertain to petition schedule property. Thirdly, under the Wakf Act, it is the Secretary, who is the competent authority to speak for and on behalf of the Society. In his capacity as the Secretary of Karnataka Board of Wakfs, he has corresponded with the Registrar of Cooperative Societies in Karnataka, to advice the petitioner-society suitably by making use of his good office to deliver vacant possession of the petition schedule premises to the third respondent herein. It is well settled that the law permits certain things to be done as a matter of necessity, which it would otherwise not countenance on the touch stone of Judicial propriety. Principles of natural justice may have to yield to demands of necessity, where the jurisdiction is exclusive and there is no legal provision calling for substitute. The Apex Court in J. MAHAPATRA & CO., -VSSTATE OF ORISSA, reported in AIR 1984 SC 1572 was pleased to observe as under:-

"Accordingly, an Adjudicator, who is subject to disqualification on the ground of bias or interest in

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the matter which he has to decide may be required to adjudicate, if there is no other person who is competent or authorised to adjudicate or if a forum cannot be formed without him or if no other competent tribunal can be constituted. In such cases if the doctrine of necessity is not allowed the full play, there would be no means of deciding the matter, it would impede the course of justice itself and the defaulting party would benefit therefrom."

13. In the present case, it is the Secretary of Karnataka Board of Wakfs, who is notified as Estate Officer by the State Government in exercise of its powers under Section 3 of the Act. The officer so appointed alone is competent to issue notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act. As observed by this Court in M/s. Blaze and Central (P) Ltd.'s case, this would be a case of Statutory exception to the applicability of the rules of natural justice. Therefore, I do not see any merit in the contention of the petitioner's learned Counsel that the Secretary of the Board cannot be a judge in its own cause and could not have initiated eviction proceedings against the

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petitioner-society by issuing a show cause notice under Section 4 of the Karnataka Public Premises (Eviction of unauthorised occupants) Act.

14. Secondly, the learned Counsel would contend that the provisions of Public Premises (Eviction of unauthorised occupants) Act is not applicable to the facts of the case, since respondents 2 and 3 and also legal representatives of late Bawarilal are claiming ownership right in the petition schedule property. To answer this precise contention of the learned Counsel for the petitioner, the averments made in this regard requires to be noticed.

15. Firstly, it is stated, while Bhawarilal was alive he had filed OS.No.949/1986, inter alia, seeking an order of declaration and permanent injunction in respect of petition schedule property on the sole ground that he is the lawful owner of the petition schedule property and the petitioner-society is in unauthorised occupation of the said premises. It is their further case that

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after the death of Sri Bawarilal, his sons are claiming right, title and interest in the petition schedule property. In my opinion, this assertion has no merit whatsoever. On the date, when the notice came to be issued by the Estate Officer first respondent herein, suit had been dismissed by the Civil Court and the order has reached finality, since the legal representatives of late Bawarilal have not taken any steps to the order and the decree made by the Civil Court before any other Superior Forum.

16. Secondly, it is stated that the Corporation of the city of Bangalore is claiming ownership rights in the petition schedule property. Even this assertion as on today does not survive. After receipt of the aforesaid notice, petitioner Society had filed its objections refuting the allegations and assertions made in the notice. The Corporation after receipt of the reply notice, infact has dropped all the proceedings against the petitioner Society.

17. Then the proceedings initiated by Slum Board and State Government requires to be noticed. It appears, State Government in exercise of its powers under Sec.3(1) of the Karnataka Slum Area (Improvement and Clearance) Act, 1973, had issued a notification dated 12.7.1977 declaring petition schedule property as Slum Area and subsequently, the State Government had issued one more notification in No.HUD.329.MCS.77 dated 6.10.1977 proposing to declare the petition schedule property as slum clearance area in exercise of its powers under Sec.11 of the Act. Not satisfied with these notifications, it appears, the State Government had issued one more notification in No.HUD.28.MCS.78 dated 31.1.1978, proposing to acquire lands under Sec.17 of the Land Acquisition Act. Aggrieved by this notification, the third respondent herein had filed a writ petition NO.3018/1979 before this Court. This Court by its order dated 24.4.1980, was pleased to dispose off the writ petition by quashing the notification issued by the State Government dated 21.4.1978 and was further pleased to direct the State

Government to hear the petitioner in W.P.No.3018/1979 and other interested persons and then only pass an appropriate orders. It appears, the legal representatives of late Bawarilal also had filed a writ petition before this Court interalia questioning the same notification and even that writ petition is dismissed by this Court, in view of its earlier order dated 24.4.1980. In view of this, petitioner - Society states that it is not only the third respondent who claims ownership of the property in possession of the petitioner - society but also the legal representatives of late Bhawarilal.

18. After disposal of the aforesaid writ petitions and in view of the directions issued by this Court in W.P.No.3018/1979, the State Government after issuing notices to respondent Board, the third respondent - Wakf Institution and to the legal representatives of late Sri Bhawarilal and after holding an appropriate enquiry, has passed an order in case No.HUD.129.MCS.84 dated 1.6.1985 and further was pleased to order that the lands

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in Sy.No.18, measuring an extent of 2 acres and 3 guntas situate at Annipura village, be notified under Sec.17 of the Karnataka Slum Areas (Improvement and Clearance) Act. However, the competent authority of the State Government has not decided the ownership of the land though Sri Bhawarilal and the Wakf Board claimed ownership of the property in dispute and further, the authority has recorded a finding that the parties may approach a competent Court of law for decision and the rightful owner may claim the compensation. Pursuant to the aforesaid order, the State Government has issued once again a final notification to acquire the property in dispute under Sec.17 of the Karnataka Slum Areas (Improvement and Clearance) Act. In the notification so issued, for the reasons best known, the State Government has shown the third respondent - Institution as the owner of the land in question. Disturbed by this notification dated 22.6.1985, gazetted on 4.7.1985, the third respondent - Institution was once again before this Court in W.P.No.8017/1990 inter alia seeking a writ to quash the entire acquisition

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proceedings on the ground of legal malafides on the part of Government of Karnataka. In those proceedings, the State Government had filed its objections to the assertions made in the writ petition and the State Government has acquired the property in dispute for the rehabilitation of slum dwellers after construction with the assistance of HUDCO. Further averment is made to the effect that the petitioner society is in unauthorised occupation of the land belonging to the Karnataka Slum Clearance Board, after the land being notified under Sec.17 of the Act. It appears, since petitioner society was putting up unauthorised construction, the third respondent Institution had filed an application for temporary injunction in pending W.P.No.8017/1990 and this Court it appears, had passed an order of 'status quo' on 10.9.1991. During the pendency of this petition, the State Government has issued one more notification dated 15.10.1992 dropping the entire acquisition proceedings. In view of this, it is stated that W.P.No.8017/1990 came to be disposed off by this Court as unnecessary by its

order dated 10.12.1992. It is after disposal of this writ petition, the third respondent - Institution has approached the second respondent - Board of Wakf, by filing a petition under Sec.5 of the Karnataka Public Premises (Eviction of unauthorised occupants) Act, 1974, interalia seeking an order of eviction against the petitioner - society. Pursuant to this petition, the competent Officer and Estate Officer of the Board - the first respondent herein has issued a show cause notice under subsection (1) of Sec.4 of the Act, interalia directing the petitioner society to show cause, why an order of eviction should not be passed against it. The learned Counsel Sri N.K. Gupta, for petitioner - society contends that the provisions of Karnataka Public Premises Eviction Act is not applicable, since respondents 2 and 3 and others are claiming ownership in respect of petition schedule property and there is no declaration by a competent Civil Court that the respondents are the owners of schedule property. Per contra, the learned Counsels for respondents 2 and 3 claim that the property

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in question is a wakf property having been notified as such in the notification No. MBW.19(1) 64 dated 7.6.1965, published in the official gazette dated 22.7.1965.

19. To answer this precise question, in my opinion, the relevant provisions of Karnataka Public Premises (Eviction of unauthorised occupants) Act, 1974, requires to be noticed. The object of the Act is to provide for eviction of unauthorised occupants from the public premises. The meaning of the expression 'public premises' is defined under Sec.2(e) of the Act. It is an inclusive definition and includes apart from the other public premises, the premises belonging to a wakf under the management of Karnataka State Board of Wakfs. The meaning of the expression 'unauthorised occupation' is defined in Sec.2(g) of the Act. The unauthorised occupation in relation to any public premises means the occupation by any person of the public premises without authority for such occupation and includes the continuance of the occupation after the authority under which he was allowed to

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occupy expires. The Section does not use the word 'possession' or the words 'entry into possession'. What is germane for the purposes of interpretation of this section is whether or not the person concerned is in occupation of the public premises. Under the Act, the eviction proceedings can be initiated by the Officer appointed under Sec.3 of the Act. It is incumbent upon the competent Officer to satisfy himself whether the property in question is a public premises or not. Sec.4 of the Act provides for issue of show cause notice, which gives person affected right to appear and state his/its case before the competent officer and contest the allegation that he was in unauthorised occupation of the public premises. Under the scheme of the Act, it is on the date when the proceedings under Sec.4 are initiated that the nature of possession has to be looked into by the competent officer. If on that date, the occupation of any person is unauthorised, then only the competent officer gets jurisdiction under the Act to issue a show cause notice under Sec.4 of the Act. Sec.4(2) of the Act, mandates that the

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grounds of eviction must be specified in the notice by the competent officer. Under Sec.5 of the Act, the competent officer is required to decide whether the person against whom notice is issued under Sec.4 of the Act, is an unauthorised occupant or not. Necessarily it means, he has no jurisdiction to decide questions of title to the disputed property. The proceedings under this provision are of summary in nature. While determining the issue whether the premises is a public premises or not, and if it involves the complicated questions of title, the competent officer may ask the parties before him to get an appropriate decision from a competent Civil Court. The decision of the competent officer under this Section is not final and can be corrected by Judicial Officer in appeal under Sec.10 of the Act. Sec.9 of the Act gives only limited powers vesting in Civil Court under the Code of Civil Procedure to the competent Officer for the purpose of holding an enquiry under the Act. Sec.10 of the Act deals with appeals. An appeal lies from every order passed by the competent Officer made in respect of

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any public premises under Sec.5 or Sec.7 to an appellate Officer. The appellate Officer for the purpose of the Act, is the District Judge having jurisdiction over the area. The appeal prescribed under this provision has a wide scope and both question of law and question of fact can be urged before the appellate authority. It is therefore, obvious that even if question of disputed title arises out of issue of notice under Sec.4 by Competent Officer, the person affected can present an appeal before the appellate authority and that dispute can be properly adjudicated upon, before any final action is taken under Sec.5 of the Act. Therefore, question regarding correctness of termination notice by competent Officer can be raised in an appeal under Sec.10 of the Act.

20. Keeping in view these statutory provisions, let me now notice the fact situation in the present case. It is not the case of the petitioner - society before this Court and it was also not its case before various other forums that it is not in unauthorised occupation of petition

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schedule premises. In this petition, the petitioner - society while questioning the notice issued by the competent Officer asserts, since there is a dispute with regard to ownership of the property, the Act does not apply in the instant case. Alternatively, it is suggested, since the competent Civil Court has not declared who is the owner of the property in question, the authority cannot issue a notice under Sec.4 of the Act. It is thus clear that the petitioner - society is disputing the title and ownership of the third respondent - Institution. In my opinion, this dispute with regard to ownership of the property can be agitated by the petitioner - society in an appeal that could be filed before the District Judge under Sec.10 of the Act, even before any final action is taken under Sec.5 of the Act. Therefore, in my opinion, Sri Panindra, learned Counsel for respondent No.2 is justified when he contends that the writ petition filed by the petitioner society is wholly premature. Even otherwise, it is not in dispute that the third respondent is a Religious Wakf Institution and is governed by provisions

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of Wakf Act and coming within the control, supervision and management of Board of Wakfs. It is also not in dispute that the then Mysore Board of Wakfs in exercise of its powers under Sec.5(2) of the Wakf act, 1954, had published the list of wakfs existing in Bangalore Urban District and the properties belonging to those institutions as per notification in No.MBW.19(1) 64 dated 7.6.1965, published in the official gazette dated 22.7.1965. That notification is one of the annexures filed by respondents along with their statement of objections. In the notification, the name of the third respondent - Institution and the properties owned by ~~it~~ is reflected. Along with various other properties, the lands in Sy.No.18 of Annipura village is also shown as property belonging to the third respondent - Wakf Institution. No one has questioned the correctness or otherwise of the entries made in the notification by instituting a suit in a Civil Court of competent jurisdiction for a decision whether the properties specified as a wakf property in the list of Wakfs published

under subsection (2) of Sec.5 of the Act is a wakf property or not. Secondly, the ~~in~~ of land in respect of immovable property in Sy.No.18 of Annipura village shows that the inamdar of the property is "Nabishah Dargha" - the third respondent Wakf Institution. Further, the statement of lands prepared by the Special Tahsildar clearly demonstrates that the lands in question are endowed to the third respondent - Religious Institution. Taking all these documentary evidence into consideration, the competent Officer being of the prima facie view that the third respondent - Wakf Institution is the owner of the property in question, on a representation made by it before the Karnataka Board of Wakfs has issued the impugned show cause notice under Sec.4 of the Act, inter alia directing the petitioner - society to show cause why an order of eviction should not be made against it. In the reasons or grounds that the Competent Officer specified in the notice, he also observes:

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"5. Whereas your society by taking undue advantage of the above said proceedings has occupied the schedule property unauthorisedly and it is now in unauthorised occupation of the schedule property. The society had also put up permanent and semipermanent structures in the schedule property without obtaining prior sanction permission of the Wakf Board and also without sanctioned plans or licence from the competent authorities. Also the society has not obtained any permission from the Wakf Institution concerned nor from the Wakf Board to occupy and put up structures on the schedule Wakf property. Thus it is evident that your society viz., the Horticultural Producers cooperative Marketing and Processing Society Ltd., Hosur Road, Bangalore-27, is an unauthorised occupant within the meaning of the explanation (g) of Sec.(2) of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974.

6. The petitioner Wakf institution described above is found in the revenue records and the khata of the schedule property stands in the name of the said institution. The Karnataka Board of Wakfs has declared the property in question as a Wakf property. The Government of Karnataka have also notified the above wakf institution as the owners of the schedule premises in the preliminary notification issued and also in the final notification gazetted on 4.7.1985. The above institution is a wakf under the management of Karnataka State Board of Wakfs and as such the petition

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schedule property comes within the definition of subclause V of Clause (e) of Sec.2 of Karnataka Public Premises (Eviction of unauthorised occupants) Act, 1974. Your society has been and is in unauthorised occupation of the entire schedule property and is utilising the same to its maximum utility illegally, as such your Society being the unauthorised occupant is liable to be evicted from the schedule property forthwith."

21. In view of this, in my opinion, it cannot be said that there is initial lack of jurisdiction for the competent Officer to issue the impugned notice. Apart from all this, there is yet another reason to sustain the impugned notice. The competent Officer when he issued the impugned notice, there was no other person claiming the ownership in the petition schedule property. The only other person, who claimed interest and ownership in the lands in question was one late Sri Bawarilal and after his death, his legal representatives. The suits filed by them for declaration of their title and for permanent injunction has been dismissed by a competent civil forum and thereafter, they have not pursued the other remedies provided before any other superior forum. The order made by

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the Civil Court in dismissing their suits for declaration and injunction has reached finality. Further, their claim before the State Government in proceeding No.HUD.129.MCS.84, regarding the ownership of the lands in question is not finally decided. Infact, the authority in his order dated 1.6.1985, observes that it is not for that authority to decide the question of ownership of the land and leaves it open to the parties before him, namely, Sri Bhawarilal and the Wakf Board to approach the competent forum for decision about title and ownership in the property. After this decision, none of the parties before this Court would tell me that either Sri Bhawarilal and after his death, his legal representatives have filed any suit for appropriate declaration claiming ownership in the property in question. The claim made by late Sri Bhawarilal and his legal representatives seems to be temporary, the reason being after completion of the proceedings before the trial Court, the State Government and before this Court, the legal representatives of late Sri Bhawarilal

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seems to have resigned to their fate and thereby seems to have given up their claim for ownership of the lands in question. The only other person, who seems to be active in this long drawn litigation from last two decades and whose spirits are still high is the third respondent - Wakf Institution, ably assisted by second respondent Karnataka Board of Wakfs. There seems to be no other person, who claims real or pseudo interest or title in the property in question. Fortunately, it is not the case of the petitioner - Society that it is the owner of the property in dispute. Petitioner - society very fairly admits in all its pleadings before various forums and even before this Court that it is in unauthorised occupation of petition schedule lands. Therefore, the claim of the petitioner - society that apart from respondents 2 and 3, others are also claiming ownership in the petition schedule property, is only a ruse to protect its unauthorised occupation. As I have already noticed, the third respondent - Wakf Institution claiming its ownership in the petition schedule property has approached

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the Board by making a formal petition interalia seeking for initiation of eviction proceedings under the Act against petitioner - society. Basing on this claim and having framed an opinion that the petitioner - society is in unauthorised occupation of a public premises belonging to Wakf Institution, the competent Officer has just issued a show cause notice in exercise of his powers under Sec.4 of the Act. Formation of opinion in his notice that the occupation of the premises by the petitioner - Society is only his tentative opinion, since an order requires to be framed by him after a summary enquiry as envisaged under Sec.5 of the Act. Going into sufficiency or otherwise of the opinion formed by the competent Officer that a person is in unauthorised occupation of the public premises is beyond the scope of a writ petition. Formation of such an opinion can be questioned by the petitioner - Society in an appeal filed under Sec.10 of the Act. In this view of the matter, in my opinion, the writ petition filed by the petitioner - Society is premature. In my opinion, petitioner - society should have

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filed its objections to the show cause notice issued by the competent Officer, taking up all such contentions which are available to it and including some of the contentions raised in this petition. It is needless to say, if the petitioner society to whom the notice of eviction is issued, if it were to plead that it is not in unauthorised occupation of a public premises since there is no lawful owner to the property in its possession, then it becomes necessary for the competent Officer to inquire into as a preliminary issue as to whether such a plea is well founded. It is for the decision making authority to take a decision on such jurisdictional fact and if he feels considerable difficulty in resolving complicated questions of title, he can ask the parties before him to get a decision from a civil Court and at any rate, at this stage, this Court in exercise of its powers under Art.226 of the Constitution will not be in a position to decide this jurisdictional fact. Liberty is reserved to the petitioner - society to take up this issue and agitate the same by filing its objections to the show cause

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notice issued by the competent Officer under Sec.4 of the Act.

22. Lastly, the learned Counsel for petitioner contends that the petitioner society by its continuous unauthorised occupation of petition schedule property, has perfected its title in the immovable property. This submission of the learned Counsel is only an argument in despair and totally alien to the concept of adverse possession. There are no factual foundation and necessary pleadings to this effect in this petition. Therefore, I do not intend to express my opinion on this issue.

23. In the result, petition fails. Accordingly, it is rejected. Rule discharged. Liberty is reserved to the petitioner to file its objections to the show cause notice issued by the first respondent within a month from the date of the order. If such objections are filed, the first respondent - competent Officer is directed to consider each one of the objections raised and pass appropriate

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orders in accordance with law. It is further directed that the Officer shall not be influenced by any one of the observations made in the course of this order, while considering the objections that may be filed by the petitioner - society. No order as to costs. Ordered accordingly.

Sd/- JUDGE

BMM/ND/-