

(R)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4<sup>TH</sup> DAY OF MARCH, 2008

PRESENT

THE HON'BLE MR. JUSTICE CHIDANANDA ULLAL

AND

THE HON'BLE MR. JUSTICE H.N. NAGAMOHAN DAS

RFA Nos. 312/2005, 339/2005, 340/2005, 341/2005 & 342/2005

RFA No. 312/2005

BETWEEN :

THE COMMISSIONER  
BANGALORE DEVELOPMENT AUTHORITY  
KUMARA PARK WEST  
T CHOWDAIAH ROAD  
BANGALORE-20. .... APPELLANT

(By Sri. NANJUNDA REDDY, Sr. COUNSEL, FOR  
Smt : MALA N D, ADV.)

AND :

- 1 M/S ADDI HOUSING  
INDUSTRIES LIMITED  
NO 43, 1<sup>ST</sup> FLOOR, CHOUCHE TOWERS  
NO 50, RASIDENCY ROAD  
BANGALORE-25  
ITS MANAGING DIRECTOR  
Sri. CHETAN P TAYAL  
S/O LATE N K TAYAL  
AGED ABOUT 51 YEARS.
- 2 Smt. CHAMELI DEVI  
W/O LATE NANDA KISHORE  
AGED ABOUT 71 YEARS  
R/AT NO 183, 9TH C MAIN  
VIJAYANAGAR, BANGALORE-40.



- 3 Sri. JAGADHISH SHETTER  
S/O. SHIVAPPA SHETTER  
AGED ABOUT 50 YEARS  
MADURA ESTATE  
NAGA SHETTIKOPPA  
HUBLI - 28.
- 4 Sri. ALLAM VEERABHADRAPPA  
S/O. ALLAM KARIBASAPPA  
AGED 54 YEARS  
NO. 815/A, III MAIN  
'E' BLOCK, III STAGE  
RAJAJINAGAR  
BANGALORE - 10.
- 5 Sri. B.K. HARIPRASAD  
S/O. LATE B. KEMPAYYA  
AGED ABOUT 50 YEARS  
NO. 2, V. TEMPLE STREET  
MALLESWARAM  
BANGALORE - 560 003.
- 6 Sri. G.K. VENKATASHIVA REDDY  
S/O. G.B. KRISHNA REDDY  
AGED 53 YEARS  
R/A. NO. 37/19, 9<sup>TH</sup> MAIN  
SADASHIVANAGAR  
BANGALORE - 80.
- 7 Sri. S.P. MUDDAHANUME GOWDA  
S/O. KARIGOWDA @ PAPEGOWDA  
AGED 51 YEARS, NO. 6, S.V. LAYOUT  
RMV II STAGE, BANGALORE - 94. ... RESPONDENTS

(By Sri. G.V. SHANTHARAJU, Sr. COUNSEL,  
FOR M/S. KESVY & CO., ADVS., FOR R-1 AND 2  
Sri. ASHOK HARANAHALLI, ADV., FOR R-3 TO R-7)

THIS RFA FILED U/SEC 96 R/W O 41 R 1 CPC AGAINST THE  
JUDGMENT AND DECREE DATED: 30.11.2004 PASSED IN OS.NO.  
1703/2003 ON THE FILE OF THE XVI ADDL.CITY CIVIL AND  
SESSIONS JUDGE, BANGALORE CITY, (CCH.NO.12), PARTLY  
DECREEING THE SUIT FOR DECLARATION AND INJUNCTION  
AND ETC.



**REA No. 339/2005**

**BETWEEN**

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**THE COMMISSIONER  
BANGALORE DEVELOPMENT AUTHORITY  
KUMARA PARK WEST  
T. CHOWDAIAH ROAD  
BANGALORE-560 020.**

**... APPELLANT**

**(By Sri. NANJUNDA REDDY, Sr. COUNSEL, FOR  
Smt. MALA N D, ADV.)**

**AND :**

---

- 1 **M/S ADDI HOUSING  
INDUSTRIES LIMITED  
NO.43, 1ST FLOOR, CHAUCHE TOWERS  
NO.50, RESIDENCY ROAD  
BANGALORE-25  
BY ITS MANAGING DIRECTOR  
Sri. CHETAN P TAYAL  
S/O. LATE N K TAYAL  
AGED ABOUT 51 YEARS**
- 2 **Sri. LALIT MOHAN  
S/O. CHETAN P TAYAL  
AGED ABOUT 26 YEARS  
R/O. NO.21, GROUND FLOOR  
CHAUCHE TOWERS, NO.50,  
RESIDENCY ROAD, BANGALORE-52  
REP. BY ITS GPA HOLDER  
Smt. KUSUM TAYAL**
- 3 **Sri. JAGADHISH SHETTER  
S/O. SHIVAPPA SHETTER  
AGED ABOUT 50 YEARS  
MADURA ESTATE  
NAGA SHETTIKOPPA  
HUBLI - 28.**

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- 4 Sri. ALLAM VEERABHADRAPPA  
S/O. ALLAM KARIBASAPPA  
AGED 54 YEARS  
NO. 815/A, III MAIN, E BLOCK, III STAGE  
RAJAJINAGAR, BANGALORE 10.
- 5 Sri. B.K. HARIPRASAD  
S/O. LATE B. KEMPAYYA  
AGED ABOUT 50 YEARS  
NO. 2, V. TEMPLE STREET  
MALLESWARAM, BANGALORE - 560 003.
- 6 Sri. G.K. VENKATASHIVA REDDY  
S/O. G.B. KRISHNA REDDY  
AGED 53 YEARS, R/A. NO. 37/19, 9<sup>TH</sup> MAIN  
SADASHIVANAGAR, BANGALORE - 80.
- 7 Sri. S.P. MUDDAHANUME GOWDA  
S/O. KARIGOWDA @ PAPEGOWDA  
AGED 51 YEARS, NO. 6, S.V. LAYOUT  
RMV II STAGE, BANGALORE - 94. ... RESPONDENTS

(By Sri. G.V. SHANTHARAJU, Sr. COUNSEL,  
FOR M/S. KESVY & CO., ADVS., FOR R-1 AND 2  
Sri. ASHOK HARANAHALLI, ADV., FOR R-3 TO R-7)

THIS RFA FILED U/SEC 96 R/W O 41 R 1 CPC AGAINST THE  
JUDGMENT AND DECREE DATED: 30.11.2004 PASSED IN OS.NO.  
1706/2003 ON THE FILE OF THE XVI ADDL.CITY CIVIL AND  
SESSIONS JUDGE, BANGALORE CITY, (CCHNO.12), PARTLY  
DECREING THE SUIT FOR DECLARATION AND INJUNCTION  
AND ETC.

**REA No. 349/2003**

**BETWEEN :**

**THE COMMISSIONER  
BANGALORE DEVELOPMENT AUTHORITY  
KUMARA PARK WEST  
T CHOWDAIAH ROAD  
BANGALORE-20. ... APPELLANT**

(By Sri. NANJUNDA REDDY, Sr. COUNSEL, FOR  
Smt : MALA N D, ADV.)



AND :

- 1 M/S ADDI HOUSING  
INDUSTRIES LIMITED  
NO 43, 1ST FLOOR, CHAUCHE TOWERS  
NO 50, RESIDENCY ROAD, BANGALORE-25  
BY ITS MANAGING DIRECTOR  
Sri. CHETAN P TAYAL  
S/O LATE N K TAYAL  
AGED ABOUT 51 YEARS
- 2 Sri. RAKESH  
S/O CHETAN P TAYAL  
AGED ABOUT 23 YEARS  
R/AT NO 307, ENCHANTING APARTMENTS  
RUSTON BAGH ROAD, BANGALORE-17
- 3 Sri. JAGADHISH SHETTER  
S/O. SHIVAPPA SHETTER  
AGED ABOUT 50 YEARS  
MADURA ESTATE  
NAGA SHETTIKOPPA  
HUBLI - 28.
- 4 Sri. ALLAM VEERABHADRAPPA  
S/O. ALLAM KARIBASAPPA  
AGED 54 YEARS  
NO. 815/A, III MAIN  
E BLOCK, III STAGE  
RAJAJINAGAR, BANGALORE - 10.
- 5 Sri. B.K. HARIPRASAD  
S/O. LATE B. KEMPAYYA  
AGED ABOUT 50 YEARS  
NO. 2, V. TEMPLE STREET  
MALLESWARAM, BANGALORE 560 003.
- 6 Sri. G.K. VENKATASHIVA REDDY  
S/O. G.B. KRISHNA REDDY  
AGED 53 YEARS  
R/A. NO. 37/19, 9<sup>TH</sup> MAIN  
SADASHIVANAGAR, BANGALORE - 80.

*Jm*

7 Sri. S.P. MUDDAHANUME GOWDA  
S/O. KARIGOWDA @ PAPEGOWDA  
AGED 51 YEARS, NO. 6, S.V. LAYOUT  
RMV II STAGE, BANGALORE - 94. ... RESPONDENTS.

(By Sri. G.V. SHANTHARAJU, Sr. COUNSEL,  
FOR M/S. KESVY & CO., ADVS., FOR R-1 AND 2  
Sri. ASHOK HARANAHALLI, ADV., FOR R-3 TO R-7).

THIS RFA FILED U/S 96 R/W ORDER 41 R 1 OF CPC  
AGAINST THE JUDGMENT AND DECREE DT. 30.11.2004 PASSED  
IN OS NO.1705/2003 ON THE FILE OF THE XVI ADDL.CITY CIVIL  
AND SESSIONS JUDGE, BANGALORE CITY (CCH NO.12),  
PARTLY DECREERING THE SUIT FOR DECLARATION AND  
INJUNCTION AND ETC.

RFA No 341/2005

BETWEEN :

THE COMMISSIONER  
BANGALORE DEVELOPMENT AUTHORITY  
KUMARA PARK WEST  
T CHOWDAIAH ROAD, BANGALORE-20. ... APPELLANT

(By Sri. NANJUNDA REDDY, Sr. COUNSEL, FOR  
Smt : MALA N D, ADV.)

AND :

- 1 M/S ADDI HOUSING  
INDUSTRIES LIMITED  
NO 43, 1ST FLOOR, CHAUCHE TOWERS  
NO 50, RESIDENCY ROAD, BANGALORE-25  
BY ITS MD CHETAN P TAYAL  
S/O LATE N K TAYAL, AGED ABOUT 51 YEARS.
- 2 Smt. NEETU BATHEJA  
W/O NIRAJ BATHEJA  
AGED ABOUT 27 YEARS  
R/AT NO 357, SECTOR-10  
PANCHAKULA, BANGALORE  
REP BY HER GPA HOLDER  
Smt. KUSUM TAYAL

- 3 Sri. JAGADHISH SHETTER  
S/O. SHIVAPPA SHETTER  
AGED ABOUT 50 YEARS  
MADURA ESTATE  
NAGA SHETTIKOPPA  
HUBLI - 28.
- 4 Sri. ALLAM VEERABHADRAPPA  
S/O. ALLAM KARIBASAPPA  
AGED 54 YEARS  
NO. 815/A, III MAIN  
E BLOCK, III STAGE  
RAJAJINAGAR, BANGALORE - 10.
- 5 Sri. B.K. HARIPRASAD  
S/O. LATE B. KEMPAYYA  
AGED ABOUT 50 YEARS  
NO. 2, V. TEMPLE STREET  
MALLESWARAM, BANGALORE 560 003.
- 6 Sri. G.K. VENKATASHIVA REDDY  
S/O. G.B. KRISHNA REDDY  
AGED 53 YEARS  
R/A. NO. 37/19, 9<sup>TH</sup> MAIN  
SADASHIVANAGAR, BANGALORE - 80.
- 7 Sri. S.P. MUDDAHANUME GOWDA  
S/O. KARIGOWDA @ PAPEGOWDA  
AGED 51 YEARS, NO. 6, S.V. LAYOUT  
RMV II STAGE, BANGALORE - 94. ... RESPONDENTS

(By Sri. G.V. SHANTHARAJU, Sr. COUNSEL,  
FOR M/S. KESVY & CO., ADVS., FOR R-1 AND 2  
Sri. ASHOK HARANAHALLI, ADV., FOR R-3 TO R-7)

THIS RFA FILED U/SEC 96 R/W O 41 R-1 CPC AGAINST THE  
JUDGMENT AND DECREE DATED: 30.11.2004 PASSED IN OS.NO.  
1704/2003 ON THE FILE OF THE XVI ADDL.CITY CIVIL AND  
SESSIONS JUDGE, BANGALORE CITY, (CCHNO.12), PARTLY  
DECREEING THE SUIT FOR DECLARATION AND INJUNCTION  
AND ETC.



**REA No. 342/2005**

**BETWEEN :**

**THE COMMISSIONER  
BANGALORE DEVELOPMENT AUTHORITY  
KUMAR PARK WEST  
T CHOWDAIAH ROAD  
BANGALORE. ... APPELLANT**

**(By Sri. NANJUNDA REDDY, Sr. COUNSEL, FOR  
Smt : MALA N D, ADV.)**

**AND :**

- 1 **M/S ADDI HOUSING  
INDUSTRIES LIMITED  
NO 43, 1 FLOOR, CHAUCHE TOWERS NO 50  
RESIDENCY ROAD, BANGALORE  
BY ITS MD CHETAN P TAYAL  
S/O LATE NK TAYAL  
AGED ABOUT 51 YRS**
- 2 **Smt. KUSUM TAYAL  
W/O CHETAN P TAYAL  
AGED ABOUT 47 YEARS  
R/O NO 307, ENCHANTING APARTMENTS  
RUSTON BAGH ROAD, BANGALORE**
- 3 **Sri. JAGADHISH SHETTER  
S/O. SHIVAPPA SHETTER  
AGED ABOUT 50 YEARS  
MADURA ESTATE  
NAGA SHETTIKOPPA  
HUBLI - 28.**
- 4 **Sri. ALLAM VEERABHADRAPPA  
S/O. ALLAM KARIBASAPPA  
AGED 54 YEARS  
NO. 815/A, III MAIN  
E BLOCK, III STAGE  
RAJAJINAGAR  
BANGALORE - 10.**

*Jm*

- 5 Sri. B.K. HARIPRASAD  
S/O. LATE B. KEMPAYYA  
AGED ABOUT 50 YEARS  
NO. 2, V. TEMPLE STREET  
MALLESWARAM  
BANGALORE - 560 003.
- 6 Sri. G.K. VENKATASHIVA REDDY  
S/O. G.B. KRISHNA REDDY  
AGED 53 YEARS  
R/A. NO. 37/19, 9<sup>TH</sup> MAIN  
SADASHIVANAGAR  
BANGALORE - 80.
- 7 Sri. S.P. MUDDAHANUME GOWDA  
S/O. KARIGOWDA @ PAPEGOWDA  
AGED 51 YEARS, NO. 6, S.V. LAYOUT  
RMV II STAGE, BANGALORE - 94. ... RESPONDENTS

(By Sri : SHANMUKHAPPA : KESVY & CO FOR )

THIS RFA FILED U/SEC 96 R/W O 41 R-1 CPC AGAINST THE JUDGMENT AND DECREE DATED: 30.11.2004 PASSED IN OS.NO. 1707/2003 ON THE FILE OF THE XVI ADDL.CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY, (CCH.NO.12), PARTLY DECREEDING THE SUIT FOR DECLARATION AND INJUNCTION AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, THIS DAY, H.N. NAGAMOHAN DAS J., DELIVERED THE FOLLOWING;

### JUDGMENT

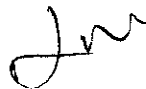
These appeals are directed against the common Judgment and Decree dated 30.11.2004 in O.S.No.1703/03 to 1707/2003 passed by the City Civil Judge, Bangalore City partly decreeing the suits granting decree of permanent injunction.

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2. The Appellant in these appeals was the defendant and the respondents were the plaintiffs before the Trial Court. In this judgment the parties are referred to their status before the Trial Court.

3. As we see the subject matter in these appeals is 3 Acres 36 guntas in Sy.No.10/3 of Gangenahalli (hereinafter for the sake of convenience called as 'schedule land'). As on 8.12.1977 the notified khatodars of the schedule land were Smt. Byakka, Janakamma, M.N.Ramaswamy, S.V.Indiramma, K.Kamaraj, Honnamma and G.P.Padmasvathamma. On 16.3.1976 the defendants issued a notification under Section 17 (1) and (3) of the Bangalore Development Authority Act, 1976 (for short called as 'BDA Act') for acquisition of certain lands including the schedule land for formation of layout called Matadahalli Layout.

4. On 30.11.1977 a final notification under Section 19(1) of the BDA Act was issued, on 16.9.1978 an award came to be passed and the award amount was sent to the civil court due to rival claims made in respect of the schedule land. On 25.1.1980 the defendants took possession of the schedule land and on 8.3.1988 a notification under Section 16(2) was issued notifying the fact of taking over the possession of schedule land along with other lands.



5. When the matter stood thus, the defendants by their resolution dated 30.7.1988 bearing No.1101 admitted that Smt.Laxmamma, D/o Byakka, one of the khatodars, continued to be in possession to an extent of 2 Acres 34 Guntas out of 3 acres 36 guntas of schedule land and that the defendants could not take possession of this land in view of the fact that certain litigations relating to acquisition proceedings were pending in the High court. Further in the said resolution the defendants resolved to make bulk allotment of the schedule land in favour of M/s Kamal Builders and Developers under Group Housing Scheme for construction of apartments. Subsequently the defendants by their resolution dated 3.8.1989 bearing No.1619 rescinded its earlier resolution dated 30.7.1988 making bulk allotment on the ground that the High court of Karnataka in its order in W.P.No.12119/98 held that defendant - BDA has no power to make bulk allotment of acquired lands.

6. Thereafter the khatodar, Smt. Lakshamma sold the lands in her possession in favour of first plaintiff M/s.Addi Housing Industries Ltd under seven registered sale deeds on different dates during the period from 27.5.1992 to 18.6.1992. The first plaintiff on the strength of the sale deeds in its favour filed civil suits in O.S.No.1235/1994, 1236/1994, 1238/1994, 1565/1994 and 4135/1994 against the defendants for decree of permanent injunction restraining them from interfering with the first plaintiff's possession and enjoyment of the sites formed in the schedule land. The



suit filed by the plaintiff bearing O.S.No.1238/1994 came to be dismissed for non-prosecution, whereas suits in O.S.No.4135/1994, 1565/1994 and 1236/1994 came to be dismissed as withdrawn and further the suit in O.S.No.1235/1994 came to be dismissed on contest by a considered judgment. In the meantime, the first plaintiff under five agreements of sale, sold portions of the suit land in question in favour of plaintiff no.2 in each of the suits in question. The plaintiff no.2 in each of the suit filed separate writ petitions in W.P.16712-13/2000 and W.P.No.16473-45/2000 on the file of this court against the defendant - BDA for a direction to regularise the sites in their possession under Section 38 of the BDA Act and the same came to be dismissed vide order dated 18.8.2000. Thereafter on 14.2.2003, BDA demolished the structures put up by plaintiff no.2 in each of the suit sites. Consequently, the plaintiffs have filed the present suits for declaration that they are in settled position as absolute owners of the schedule sites and for consequential injunction.

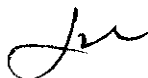
7. The defendants entered appearance before the Trial Court and filed written statement interalia contending that the acquisition proceedings in respect of the schedule land attained finality and as such the suit for declaration of title is liable to be dismissed. It is further contended that the construction put up by the plaintiffs on the schedule sites are unauthorised and the defendants have rightly demolished the same. As on the date of filing of the suits the plaintiffs were not in



possession of the schedule sites and as such they are not entitled for decree of permanent injunction. The defendants opposed the claim of the plaintiffs. The following are the identical issues framed by the trial Court in all the suits.

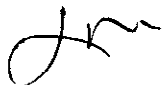
- i) Whether plaintiffs prove, that they are the absolute owner of the suit schedule property with a given boundaries and measurement as on the date of the filing of the suit?
- ii) Whether plaintiffs further prove, that they are in lawful and settled possession of the suit schedule property with a given boundaries and measurement as on the date of filing of the suit?
- iii) Whether the plaintiffs prove, that the defendants without having any right, title or interest over the suit schedule property interfering in their peaceful enjoyment thus caused interference?
- iv) If so, whether plaintiffs are entitled to have a relief of perpetual injunction against the defendants as prayed?
- v) To what order and decree?

8. Plaintiffs examined one witness as PW.1 and got marked Ex.P1 to P88. The defendants examined two witnesses as DW.1 and 2 and got marked Ex.D1 to D9. The Trial Court after hearing both the parties and on appreciation of pleadings, oral and documentary evidence held that



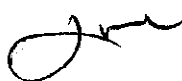
the plaintiffs are in settled possession of the schedule sites and consequently granted the decree of permanent injunction. The Trial Court reserved liberty to the plaintiffs to agitate the remedy for ownership before the proper forum. Hence these appeals by the defendants/BDA.

9. Sri Nanjundareddy, learned senior counsel for the defendants contend that the Trial Court committed an error in holding that the plaintiffs are in settled possession of the schedule sites though the material on record establishes that they have put up unauthorised structures. The Trial Court committed an error in not considering Ex.D5, the Mahazar drawn by the defendants evidencing the fact that they have taken possession of the schedule sites and also Ex.D6, the notification dated 8.3.1988 issued under Section 16(2) of the Land Acquisition Act evidencing the taking over possession of the schedule land. The Trial Court committed an error in not noticing the fact that the first plaintiff has not derived any right, title and interest in the schedule sites under the registered sale deeds executed by Smt.Laxamma and consequently the plaintiff no.2 in each of suit under the alleged agreement of sales. The plaintiffs are not in possession of the schedule land as on the date of filing the suit and as such the grant of decree of permanent injunction is bad in law. The plaintiffs have failed to prove and establish the necessary ingredients to show that they are in settled possession of the schedule sites. The reasoning of the Trial Court to hold that the plaintiffs are in



possession of schedule sites is contrary to the law declared by the Apex court and this court in several decisions. Reliance is placed on the following decisions:

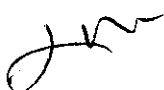
1. ILR 1998 Kar 1441  
Poornaprajna House Building Co-operative Society V.  
Ballamma.
2. AIR 1996 SC 3377  
Tamilnadu Housing Board V. Viswam
3. AIR 1998 SC 1608  
M/s.Larsen and Toubro Limited V. State of Gujarat.
4. AIR 1968 SC 702  
Munshi ram V. Delhi Administration
5. 1992 Supp (II) SCC 29  
East India Hotels V. Syndicate Bank
6. 2004 (1) SCC 769  
Rame Gowda Vs. M.Varadappa Naidu
7. ILR 2000 KAR 4134  
John B James Vs. BDA
8. AIR 1995 KAR 192  
B.T.Sakku Vs. Commissioner, BDA
9. 2007 SAR (Civil)403 (SC)  
P.T.Munichikkanna Reddy Vs. Revamma
10. 2004 (10) SCC 779  
Karnataka Board of Wakf Vs. Govt. of India
11. AIR 1964 SC 1254  
S Muminanjappa Karim Vs. Bibi Sakinal
12. 1969 (1) SCC 639  
Mohan Lal Vs. Mirza Abdul Gaffar
13. ILR 1996 Kar 1340  
Alla Baksh Vs. Mohd. Hussain



10. Sri Ashok Harnahalli, learned counsel for the impleading applicants support the claim of the defendants. He contends that the impleading applicants are the allottees of the sites formed by the defendants in the schedule land. The impleading applicants have credited the allotment charges to the defendant - BDA and they have secured the registered sale deeds. Because of the impugned Judgment and Decree the impleading applicants are prevented from developing the sites allotted to them.

11. Sri Shantaraj, learned senior counsel for the plaintiffs support the impugned Judgment and Decree of the Trial Court. He contends that the defendants in their resolution dated 30.7.1988 admitted that plaintiffs' vendor Smt. Laxamma who is the daughter of one of khatodars of schedule lands by name Byakka continued to be in possession and that the defendant - BDA is not able to recover the possession. There is no other evidence to show that subsequent to 30.7.1988, the defendants have recovered the possession in accordance with law either from the plaintiffs or from their vendor. In the absence of any evidence on record, the Trial Court is justified in holding that the plaintiffs are in settled possession of the schedule land. Therefore he pressed to dismiss the appeals.

12. Heard arguments on both the side and perused the entire appeal papers and Trial Court records.




13. The only question that arise for our consideration in these appeals is "whether the trial court is justified in holding that the plaintiffs are in settled possession of the schedule land?"

14. It is necessary at this stage to notice the law laid down by the Supreme court and this court on the question of settled possession. The Supreme Court in *Tamilnadu Housing Board Va. Virwan*, AIR-1996 SC 3377 hold in para 9 and 12 as under:

"9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchanama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."

12. Thus considered, the title of the land in Survey No.140/4 having been vested in the appellant, to whomsoever it belonged earlier, it stood divested from him/them and no one can lay any claim to the said acquired land once over and claim injunction on that basis. The injunction, therefore, cannot be issued against the true owner, namely, the Housing Board in whom the land ultimately stood vested and then stood transferred to Municipal Corporation. A trespasser cannot claim injunction against the owner nor can the Court to issue the same."



In *Munshi Ram V. Delhi Administration* AIR 1968 SC 702 the Supreme Court held as under:

"It is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law he is entitled to defend his possession even against the rightful owner. But stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than necessary. Such entry will be viewed only as a resistance to an intrusion upon possession which has never been lost. The persons in possession by a stray act of trespass, a possession which has not matured into settled possession, constitute an unlawful assembly, giving right to the true owner, though not in actual possession at the time to remove the obstruction even by using necessary force."

In *East India Hotels Vs. Syndicate Bank* 1992 Supp (II) SCC 29 the Supreme Court held as under:

"In *Puran Singh V. State of Punjab*, while following the ratio in *Munshi Ram* case, this Court held that it is difficult to lay down any hard and fast rule as to when the

possession of a trespasser can mature into settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisturbed and to the knowledge of the owner or without any attempt at concealment. There is no special charm or magic in the words "settled possession" nor is it a ritualistic formula which can be confined in a strait-jacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner. It would be reiterated that the possession must be within the knowledge either express or implied, of the owner or without any attempt at concealment and which contains an element of animus possidendi. In that case possession for 14 days was held to be settled possession since they raised the crops in the land. This view was reiterated again in *Ram Rattan V. State of U.P.* laying therein that the true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law."

A Division Bench of this court in *John B. James & others Vs. Bangalore Development Authority & another* ILR 2000 KAR 4134 held as under:



"71. Having regard to the principles laid down in the said decisions, we may conveniently cull out the legal position in regard to a true owner vis-à-vis a trespasser as under:

- i) A true owner [even if it is the State or a statutory body] has no right to forcibly dispossess an unauthorised occupant [including a trespasser] in settled possession, otherwise than in accordance with law.
- ii) A trespasser or unauthorised occupant in settled possession, can be dispossessed, only in accordance with an order/decrece of a competent court/tribunal/authority or by exercise of any statutory power of dispossession/demolition entrusted to the state or statutory Authority.
- iii) A person in unauthorised possession shall be deemed to be in settled possession, if his entry into the property was lawful or authorised.
- iv) A person in unauthorised possession, whose entry into the property is illegal or unauthorised, can claim to be in unsettled possession, only if he is in open, continuous and actual physical possession over a sufficiently long period, with the knowledge of the true owner.
- v) A surreptitious and unauthorised entry into another's land and stealthy trespasser, will not have the effect of dispossessing the true

owner of giving possession to the trespasser. Such acts will lead to settled possession only when the true owner having knowledge of it, acquiesces in it.

- vi) Where the trespasser is not in settled possession, all acts of the trespasser in regard to the property will be considered as only attempts to secure possession. The true and rightful owner can re-enter and reinstate himself by removing the obstruction or the unauthorised construction put up by the trespasser by using the minimum force. Such action by the true owner will be considered as defending his possession and resisting an intrusion with his property and not forcible dispossession of an unauthorised occupant.
- vii) Where however the trespasser is in settled possession and such settled possession adverse to the true owner continues for 12 years, the right of the true owner is extinguished and the trespasser as possessory owner acquires absolute title to the property in question.

"73. The Supreme Court has repeatedly pointed out that to claim settled possession, a trespasser's possession must be effective, undisturbed and to the knowledge of the true owner and for a sufficiently long period to show acquiescence by the true owner. 'What is sufficiently long period' depends on the facts of each case. It has been held that in the case of

*JH*


a cultivable land, if a trespasser enters possession and grows any crop with the knowledge of the true owner, then it is possible to say that he completes and accomplishes the act of settled possession. In the case of BDA land, the position is completely different. The land is urban land and not cultivable land, BDA being a statutory authority owning large tracts of land, cannot be expected to take action for demolition or effect resistance immediately after it comes to know about the unauthorized construction. Firstly the unauthorized occupation and construction should come to the notice of BDA secondly, BDA has to verify whether the occupant has obtained any order of stay or injunction. Thirdly, the matter should be brought to the concerned section and appropriate orders should be obtained to obstruct or demolish the construction. Having regard to the verification process involved and hierarchal system in vague, the administrative machinery moves slowly and by the time a demolition squad visits the site, three to four months might elapse from the date of knowledge. Therefore a trespasser cannot, merely by putting up a shed clandestinely in BDA land or by staying in such shed for a few months claim that he is in settled possession and that BDA can not demolish his structure or that BDA can dispossess him only by initiating legal action in a Court or law or under the public premises Act. Unless and until the possession of a trespasser or unauthorized occupant becomes settled possession, BDA continues in possession and can therefore demolish the unauthorized structures put up in its land and forcibly



evict the unauthorized occupant or trespass by using the minimum force."

"77.2. Where the vacant urban land has vested in BDA as a consequence of acquisition followed by taking over of possession, BDA becomes the absolute owner of such land in possession, freed from all claims and encumbrances. Consequently, the original owner ceases to have any right, title or interest in such vacant land. Therefore, the question of such ex-owner continuing in possession of such vacant land or transferring title or delivering possession of such land or any part thereof to any one else either by executing a sale deed or an agreement of sale or a power of attorney, does not arise. Consequently, neither the original owner nor any alleged transferee agreed holder or attorney holder can claim to be in possession of such vacant land, belonging to BDA. Therefore, the claim of possession of all petitioners in regard to BDA land, which continues to be vacant, is liable to be rejected."

"78. As stated above, any trespasser or other person can be said to be a person in possession of a land belonging to another. Only if he has actual physical possession or effective possession. While there can be an absentee landlord or absentee owner, there cannot be an absentee trespasser or absentee unauthorized occupant, in regard to the vacant land. A person who does not have title can claim a right over a property only on the basis of possession and not otherwise. It will be absurd for a person who admittedly does not have title,

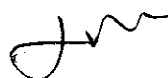


to say or contended that he is in possession of a vacant land belonging to another person, unless he has actual physical possession. Supreme court has repeatedly held that to claim settled possession, a trespasser or unauthorized occupant should be in actual physical possession of the property continuously for a sufficiently long period demonstrating the accomplishment of possession. Supreme Court has held that a stray or casual act of possession can not give raise possession.

"78.1. Therefore, a person cannot, merely by entering BDA land and putting up a compound wall or a foundation contend that he is in possession. Such act or acts would at best amount to casual or stray acts of possession. If such a person who puts merely a compound wall or foundation does not continue in actual possession, he will not be entitled to contend that he is in settled possession. Therefore, petitioners who have merely put up a foundation or compound wall in BDA land, cannot claim to be in possession of such land and BDA continues in possession of such land and any act done by BDA to demolish such foundation or compound wall, will be well within its right to protect its possession against trespass/encroachment."

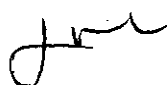
15. From the decisions referred to above the following principles will emerge:

- i) Once the land stood divested from the owner and vested with the acquiring authority, no one can lay any claim to the acquired land.



- ii) A person who purchases the land subsequent to the issuance of notification will not get any title to the land.
- iii) A trespasser is not entitled for injunction against true owner.
- iv) A trespasser in settled possession of the acquired land is entitled to defend his possession even against true owner unless he is evicted by due process of law.
- v) Settled possession means, a trespasser's possession must be effective, undisturbed and to the knowledge of the true owner and for a sufficiently long period to show acquiescence by the true owner.
- vi) What is sufficient long period depends upon the facts of each case.

16. Keeping in mind the above principles of law, it is necessary to examine the fact situation in the present case. On 16.3.1976 under Section 17(1) and (3) of the BDA Act, the defendants notified the schedule land for acquisition. On 30.11.1977 a final notification under Section 19(1) of the BDA Act was issued. On 16.9.1978 an award came to be passed. On 25.1.1980 the defendants took possession of schedule lands under a Mahazar. On 18.3.1988 a notification was issued under Section 16(2) of the Land Acquisition Act notifying the fact of taking possession. This undisputed material on record establishes the fact that schedule lands are divested from the owner Khatedar Smt. Byakka and vested with the



defendant BDA. The registered sale deeds in favour of first plaintiff between 27.5.1992 and 18.6.1992 as found at Ex.P3, P6, P22, P49, P65, P81 and P82 are subsequent to the vesting of schedule lands in favour of defendants and as such they are illegal and the first plaintiff has not derived any title and interest in the schedule lands. The possession of first plaintiff under these illegal sale deeds is not lawful. Consequently, the sale of sites formed in the schedule land in favour of second plaintiff under different agreement of sales as found at Ex.P17, P30, P45, P75 and P160 are all illegal and unlawful.

17. The suits filed by the first plaintiff in O.S.No:1235/1994, 1236/94, 1238/1994, 1565/1994 and 4135/1994 for grant of decree of permanent injunction are all dismissed. The writ petitions filed by the second plaintiff in writ petition No.16712-13/2000 and Writ Petition 16743-45/2000 for regularisation of schedule sites came to be dismissed vide order dated 18.8.2000. Further the plaintiffs in their plaint admit that on 14.2.2003 the defendant BDA demolished the structures put up by them on the schedule sites. These admitted facts on record clearly establishes the fact that plaintiffs are not in settled possession of schedule sites and at best the same may be litigious possession.

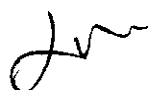
18. The defendants admit in their resolution dated 30.07.1988 that they could not take physical possession from the original khatodars Smt.Byakka and after her demise from her daughter Smt.Lakshamma.



But Smt. Lakshamma who was said to be in possession of the schedule lands ceased to be in possession when she executed registered sale deeds between 27.5.1992 and 18.6.1992 in favour of first plaintiff. Further first plaintiff admits that under five agreement of sales dated 30.1.1994, they delivered the possession of the schedule sites in favour of second plaintiff in each of the suit. This chronology of events manifestly establishes the fact that no one continued in possession of schedule sites for reasonably long length of time to constitute as an ingredient to the settled possession.

19. It is not in dispute that Smt. Lakshamma ceases to be in possession of schedule land subsequent execution of registered sale deeds in favour of first plaintiff between 27.5.1992 and 18.6.1992. Further first plaintiff ceases to be in possession of schedule land subsequent to execution of agreement of sale in favour of second plaintiff on 30.1.1994. Therefore transfer of possession of schedule land from one person to another person will not amount to settled possession. The concept of settled possession is not transferable for consideration by one person to another. Therefore the plaintiffs are not in settled possession of schedule land.

20. The plaintiffs in their pleading and also in the evidence admit that the defendants demolished the structures put up on the schedule land on 14.2.2003. In the circumstances it cannot be said that the plaintiffs were in settled possession as on the date of filing the suit and consequently



not entitled for a decree of permanent injunction. The trial Court without considering the evidence on record and the law on the question involved committed an error in granting decree of permanent injunction. The judgment and decree of the trial Court is liable to be set aside.

21. For the reasons stated above, the following:

**ORDER**

- I. The appeals are hereby allowed.
- II. The judgment and decree in O.S. Nos. 1703/2003 to 1707/2003 passed by the trial Court are hereby set aside.
- III. The suit of the plaintiff in O.S. Nos. 1703/2003 to 1707/2003 are hereby dismissed.
- IV. Parties to bear their own costs.

Sd/-  
Judge

Sd/-  
Judge

LRS/DKB.