A CHIEF CONSERVATOR OF FORESTS GOVT. OF A.P.

v.

THE COLLECTORS AND ORS.

FEBRUARY 18, 2003

B [SYED SHAH MOHAMMED QUADRI AND ASHOK BHAN, JJ.]

Code of Civil Procedure, 1908—Sections 79 and 80, Order XXVII Rule 1 and Order 1 Rules 9 and 10—Dispute between two Government Departments with regard to title of land—Chief Conservator of forest filing writ petition, not arraying State as party—Dismissal of writ petition—Appeal—Maintainability of—Held, in absence of State in array of parties, cause will be defeated for non-joinder of necessary party to lis—Chief Conservator of Forest as petitioner/appellant can neither be treated as State nor it can be a case of mis-description of State—Hence writ petition and appeal arising therefrom not maintainable—Constitution of India, 1950—Articles 131, 226 and 300.

C

D

Constitution of India, 1950—Article 131—Resolving controversy arising between various departments of the State or the State and any of its undertakings—Setting up of Committee—Suggested.

E

Evidence Act, 1872—Section 110—Applicability of—Held : as pattedars in possession of land for a long period and State unable to prove that pattedars not owner, presumption under section applicable—Thus pattedars' title to the land upheld—Andhra Pradesh (Telengana Area) Land Revenue Act, 1317 Fasli—Andhra Pradesh Telengana Area Forest Act, 1355 Fasli.

F

A dispute arose between two Government Departments with regard to title of land in question. Commissioner of Survey, Settlement and Land Record was directed to make an enquiry and pass an order. Thereafter an order was passed. Appellant-Chief Conservator of Forests filed a writ petition challenging the order. State was not arrayed as a party. While the enquiry was pending respondents-pattedars filed suit for declaration of title, recovery of compensation and for rendition of accounts. Trial court decreed the suit as regards the relief of declaration of title and rendition of accounts but declined the relief for award of compensation. Collector filed an appeal. Both the writ petition and the appeal were heard together.

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H

High Court dismissed the same. Hence the present appeals. A

Respondents-pattedars contended that no individual officer of the Government under the scheme of the Constitution or the Code of Civil Procedure can file a suit or initiate any proceeding in the name of the post he is holding, which is not a juristic person; and that in view of the long uninterrupted possession of the pattedars, title to the land in their favour B has to be presumed and it would be for the State-appellants to prove that they are not the owners of the land.

Appellants contended that before filing the appeal, the Chief Conservator of Forests had obtained orders and, therefore, the writ petition and the appeal should be deemed to have been filed by the C Government, not naming the Government in the writ petition as the petitioner or in the appeal as the appellant, is only a procedural matter and, therefore, it is not fatal to the maintainability of the writ petition and the appeal; and that the presumption under Section 110 is not attracted.

D

Dismissing the appeals, the Court

HELD: 1.1. A legal entity-a natural person or an artificial person-can sue or be sued in his/its own name in a court of law or a Tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in E the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. F In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause title so that the party before the Court is correctly described; however a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order I of C.P.C. mandates that no suit shall be defeated by reason of G the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, case must be taken to ensure that the necessary party is before the Court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order I C.P.C. provides remedy when a suit is filed in the name of wrong plaintiff H

A and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings. [190-C]

1.2. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 of C.P.C. viz., B in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the Government set-up, from the lowest to the highest, is not recognized as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts C or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or Tribunal. It is made clear that this principle does not apply to a case where an official of the government acts as a statutory authority and sues or persues further proceeding in its name because in that event, it will not be a suit or proceeding for or on D behalf of a State/Union of India but by the statutory authority as such. [190-H; 191-A-C]

1.3. Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India. E It was not contemplated by the framers of the Constitution or the C.P.C. that two departments of a State or the Union of India will fight litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public F interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law G which requires that for suing or being sued, there must be either a natural or a juristic person. The State/Union of India must evolve a mechanism to set at rest all inter-departmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. [191-D-G]

H *Oil and Natural Gas Commission* v. *Collector of Central Excise,* [1992]

Suppl. 2 SCC 432 and *Oil and Natural Gas Commission and Anr.* v. *Collector of Central Excise,* [1995] Suppl. 4 SCC 541, referred to. A

1.4. The facts, make out a strong case that there is a felt need of setting up of similar Committees by the State Governments also to resolve the controversy arising between various departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to set up a Committee consisting of the Chief Secretary of the State, the Secretaries of the concerned departments, the Secretary of Law and where financial commitments are involved, the Secretary of Finance. The decision taken by such a committee shall be binding on all the departments concerned and shall be the stand of the Government. [192-C-D] B C

1.5. After the statutory order of the Commissioner of Survey, Settlement and Land Record, the matter should have rested there. It is not only inappropriate but also illegal for the Chief Conservator of Forest, though he might have done so in all good faith, to have questioned the order of the Commissioner of Survey, Settlement and Land Record before the High Court. The Chief Conservator of Forests as the petitioner can neither be treated as the State nor can it be a case of misdescription of the State. The fact is that the State was not the petitioner. Therefore, the writ petition was not maintainable in law. The High Court, had it deemed fit so to do, would have added the State as a party; however, it proceeded, erroneously, as if the State was the petitioner which, as a matter of fact, was not the case and could not have been treated as such. As the writ petition itself was not maintainable, it follows as a corollary that the appeal by the Chief Conservator of Forests is also not maintainable. It cannot be said that merely because the concerned officer had obtained the permission of the Government to file an appeal, which is not placed before this court, the writ petition and the appeal should be treated as an appeal by the Government. The permission granted to the concerned authority might be a permission to file an appeal which cannot reasonably be construed as authorisation to file the appeal in his own name, contrary to law. It could only be a permission to file the appeal in the name of the State in accordance with the provisions of the Constitution and the C.P.C. It is also recorded that in spite of the Pattedars taking objection to that effect at the earliest, no steps were taken to substitute or implead the State in the writ petition in the High Court or in the appeal in this Court. [192-E-H; 193-A-B] D E F G H

A **2.1. Section 110 of the Evidence Act embodies the principle that possession of a property furnishes *prima facie* proof of ownership of the possessor and casts burden of proof on the party who denies his ownership. The presumption, which is rebuttable, is attracted when the possession is *prima facie* lawful and when the contesting party has no title. [194-E-F]**

B **2.2. The pattedars proved their possession of the lands in question from 1312 Fasli (1902 A.D.) as pattedars. There is long and peaceful enjoyment of the lands in question but no proof of conferment of patta on the late Raja and the facts relating to acquisition of title are not known. The appellant-State could not prove its title to the lands. On these facts,**
C **the presumption under Section 110 of the Evidence Act applies and the appellants have to prove that the pattedars are not the owners. The appellants placed no evidence on record to rebut the presumption. Consequently, the pattedars' title to the land in question has to be upheld. [194-H; 195-A]**

D **2.3. The notification issued under Section 29 of the Forest Act shows that as many as fourteen villages are enumerated therein. Land in question do not figure in the notification. Even otherwise also, the notification does not show anything more than the fact that the Government has formed a protected forest area. That by itself does not extinguish the rights of the**
E **private owners of the land nor does it show that the lands in question vest in the State. A plain reading of the statutory order passed by the Commissioner of Survey, Settlement and Land Record places the matter beyond doubt that the suit lands were patta lands of the pattedars. Thus the High Court was right in confirming the order of the Commissioner of Survey, Settlement and Land Record and the order of the trial court.**
F **[195-B-D]**

Nair Service Society Limited **v.** *Alexander and Ors.,* **AIR (1968) SC 1165, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8580 of 1994.

G From the Judgment and Order dated 24.1.1989 of the Andhra Pradesh High Court in W.P. No. 3414 of 1982.

WITH

(C.A. No. 9097 of 1995)

H K. Amreswari, P.P. Rao, Harish N. Salve, T.V. Ratnam, K. Subba Rao,

G. Venu Babu, G. Prabhakar, Ms. T. Anamika, P.S. Narasimha, G. Balaji, P. Sridhar, Anang Bhattacharya and V.G. Pragasam for the appearing parties. A

The Judgment of the Court was delivered by

SYED SHAH MOHAMMED QUADRI, J. These two appeals are from the common judgment of a Division Bench of the High Court of Andhra Pradesh in writ Petition (C) No. 3414 of 1982 and Appeal Suit No. 2291 of 1986 dated 24th January, 1989. B

The appeals arise the same facts and one set of the parties is common. The subject matter of litigation is an extent of acres 2423.37 in Jatprole Jagir, Kollapur Taluk, Mahboobnagar District in the erstwhile the Nizam's State of Hyderabad. After the accession of the Nizam's State of Hyderabad with the Union of India, the Andhra Pradesh (Abolition of Jagirs) Regulations, 1358 Fasli (hereinafter referred to as 'the Regulations') came into force on September 20, 1949. Under that Regulation, all Jagirs, including the Jatprole Jagir, stood abolished from that date and their administration stood vested in the State. Raja S.V. Jagannadha Rao was the last Jagirdar. Respondent Nos. 3 and 4 are his legal representative [hereinafter referred to as the Pattedars']. It is the case of the pattedars that when the State took over the Jagir, the Forest Department of the State took under its control the forest land, measuring acres 1,20,824. However, the lands comprised in Survey No.11 of Asadpur village measuring acres 1523 and Survey No. 168 of Malachinthapalli village measuring acres 9000 continued to remained in the possession of the Raja as his patta lands. Soon thereafter, Notification No. 282 under Section 29 of the Andhra Pradesh (Telengana Area) Forest Act, 1355 [Fasli for short, 'the Forest Act'] was issued on December 4, 1950. The notification enumerated fourteen villages comprising of an extent of 93.030 acres of Kollapur taluk Mahboohangar District, which was named as Kollapur range. It appears that a notification under Section 30 of the Forest Act was also issued but that notification is not on record. In the year 1953, re-survey of the erstwhile Jagir was conducted. The lands in question, namely, Survey No. 40 (old) was assigned Survey no. 11 and Survey No. 241 (old) was assigned Survey No. 168; however, the finalisation of the Survey was done in 1962. The Pattedars filed an application under Section 87 of the Andhra Pradesh (Telengana Area) Land Revenue Act, 1317 Fasli [For short, 'the land Revenue Act'] to rectify the mistake noted in the settlement record pursuant to the said re-survey. The mistake was alleged to be that the name of the Khatedar was not shown against the said Survey numbers which where shown as 'Mahasura' C D E F G H

A (protected). The District Collector, after conducting the necessary enquiry and on a joint inspection in which the Land Record Assistant and the Forest Range Officer participated and in which working plan was produced showing the area as the patta of the late Jagirdar, passed an order on April 25, 1966 directing rectification of the settlement record. Based on the said order, the B Director of Settlement rectified the records and issued a supplementary set war on May 11, 1966.

Under the Forest Act, a person who transports forest produce is required to obtain transit permit. Though in the past, the Pattedars were transporting forest produce on obtaining transit permit, it was , however, denied to them C on their application made on October 14, 1966. It is worth noticing that the tehsildar of those villages recommended granting of transit permits showing the lands as patta lands. It was for the first time that the Forest Department appeared to have taken the plea that the lands in question were forest lands and the Chief Conservator of Forest (Appellant No. 1 in Civil Appeal No. 8580 of 1994) expressed that the lands in question were forest land and D doubted they were patta lands of the Pattedars. The doubt expressed by the Chief Conservator of Forest in regard to the nature of the said lands let to a further probe into the matter as to whether the lands comprised in the aforementioned survey numbers were treated as part of Jagir at the time of taking over the jagir or whether they were treated as patta lands of the Raja. E In view of the queries made by the Chief Conservator of Forest, the Collector, Mahboobnagar District formulated as many as five questions and directed the Tehsildar to furnish replies thereto. On may 2, 1972, the Tehsildar replied that the lands in question were patta lands and assessed to land revenue; there was nothing on record to show that they were taken over along with the Jagir and other forest area under the supervision of the Government. A letter No. F D. Dis. J/2706/72 dated 21st October, 1972 from the R.D.O. addressed to the Collector discloses that from the accounts maintained for the period prior to the re-survey in the year 1953, rectification of the record and issuance of supplementary setwar, it was proved that the lands in question were the personal property of the late Raja. Further, on January 16, 1974, a letter was G addressed by the Director of Settlement to the Chief Conservator of Forest that the lands in question were in possession of the respondents prior to the abolition of Jagirs and that the matter did not require any further examination as the rectification of record was made under Section 87 of the Land Revenue Act. There is a reference to the report of the R.D.O. dated 31st October, 1975, which was made on inspection and after making local enquiries, stating H that the lands were in possession of the Pattedars as private patta land. While

so, the Government of Andhra Pradesh proposed to acquire the lands in question which were likely to be submerged upon completion of the Srisailam Project. Two notifications were issued under Section 4 of the Land Acquisition Act, 1894. The first was issued on January 31, 1975 proposing to acquire 410 acres out of the land in Survey No. 11 in Asadpur village and the second was issued on November 4, 1976 proposing to acquire an extent of 45 acres and 20 guntas of land in Survey No. 168 in Malachintapalli village for Srisailam Project. However, the Government of Andhra Pradesh issued orders cancelling the said notifications issued under Section 4 of the Land Acquisition Act, 1894 and withdrawing from the acquisition, on the ground that the said lands were Government lands, on February 16, 1978. The said order was assailed by the Pattedars in Writ Petition (C) No. 2084 of 1978 before the High Court of Andhra Pradesh. The High Court quashed the recital in the impugned order of the Government that the said lands belonged to the Government but in other respects maintained the same by partly allowing the writ petition on February 21, 1979. This gave rise to filing of a declaratory suit by the Pattedars and ordering further enquiry into the matter by the Government of Andhra Pradesh.

In view of the dispute between the two departments of the Government with regard to the title to the lands in question, the Government of Andhra Pradesh issued orders on 17th August, 1979 directing the Commissioner of Survey, Settlement and Land Record to make an enquiry under Section 166-B of the Land Revenue Act and to pass a speaking order after hearing the parties concerned. While the enquiry was pending, the Pattedars filed the suit (O.S. No. 73 of 1979, which was re-numbered as O.S. 7 of 1984) in the court of the learned Subordinate Judge, Wanaparthy, Mahboobnagar District, for a declaration of title, recovery of compensation for the lands in question and for rendition of accounts. Pursuant to the said order of the Government, the Commissioner conducted an enquiry, heard both the parties and opined that the order of the Collector, passed under Section 87 of the Land Revenue Act, was correct and did not call for any interference there with. That order was passed by the Commissioner on December 5, 1981. The Government apparently accepted that order of the Commissioner as no further steps were taken by it to correct or set aside that order. However, the doubt in the mind of the Chief Conservator of Forest still persisted and he filed Writ Petition (C) No. 3414 of 1982 in the High Court of Andhra Pradesh challenging the order of the Commissioner of Survey, Settlement and Land Record dated December 5, 1981.

A The trial court, after conducting trial and on consideration of the evidence on record, decreed the suit with costs, insofar as the reliefs of declaration of title and rendition of accounts but declined the relief of award of compensation/ damages by judgement and decree dated March 25, 1985. Aggrieved by the judgement and decree of the learned Subordinate Judge, the defendants - the Land Acquisition Officer, Mahboobnagar District and the Government of B Andhra Pradesh represented by the Collector, Mahboobnagar - filed Appeal No. 2291 of 1986, before the High Court of Andhra Pradesh. The aforementioned Writ Petition (C) No. 3414 of 1983 and Appeal No. 2291 of 1986 were heard together and dismissed by a Division Bench of the High Court by a common judgement on April 21, 1989, which is the subject matter of C challenge in the appeals before us.

Mr. P.P. Rao, learned senior counsel appearing for the Pattedars-respondents in Civil Appeal No. 8580 of 1994 and Mr. Harish N. Salve, learned senior counsel appearing for the Pattedars-respondents in Civil Appeal No. 9097 of 1995, raised a preliminary objection as to the maintainability of D the writ petition filed by the Chief Conservator of Forest as well as the appeal arising therefrom. Article 300 of the Constitution of India, it is contended, provides that the Government of a State may sue or be sued in the name of the State; Section 79 of the Code of Civil Procedure, 1908 directs that the State shall be the authority to be named as plaintiff or defendant in a suit by E or against the Government and Section 80 thereof directs notice to the Secretary to that State or the Collector of the District before the institution of the suit; and Rule 1 of Order 27 lays down as to who should sign the pleadings. No individual officer of the Government under the scheme of the Constitution or the Code of Civil Procedure can file a suit or initiate any proceeding in the name of the post he is holding, which is not a juristic person. Ms. K. F Amreswari, learned senior counsel appearing for the appellants, has argued that before filing the appeal, the Chief Conservator of Forest had obtained orders and therefore, the writ petition and the appeal should be deemed to be filed by the Government of Andhra Pradesh; not naming the Government of Andhra Pradesh in the writ petition as the petitioner or in the appeal as the G appellant is only a procedural matter and, therefore, it is not fatal to the maintainability of the writ petition and the appeal.

To appreciate the contention of the learned senior counsel, it will be useful to refer to the relevant provisions of the Constitution of India [for short, 'the Constitution'] and the Code of Civil Procedure, 1908 [for short, H 'the C.P.C.']. Article 300 of the Constitution falls in Chapter III, which deals

with property, contract, rights liabilities, obligations and suits. Article 300 reads as follows:

> "300. Suits and proceedings.—(1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.
>
> (2) If at the commencement of this Constitution—
>
> (a) any legal proceedings are pending to which Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and
>
> (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings."

From a perusal of the provision, extracted above, it is evident that the Government of India as also the Government of a State may sue or be sued by the name of the Union of India or by the name of the State respectively, subject, of course, to any provisions which may be made by Act of Parliament or of Legislature of such State by virtue of powers conferred by the Constitution.

Section 79 of the C.P.C. deals with suits by or against the Government. It reads thus:

> "79 Suits by or against Government.—In a suit be or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be—
>
> (a) in the case of a suit by or against the Central Government, the Union of India; and
>
> (b) in the case of a suit by or against a State Government, the State."

A plaint reading of Section 79 shows that in a suit by or against the

A Government, the authority to be names as plaintiff or defendant, as the case may be, in the case of the Central Government, the Union of India and in the case of the State Government, the State, which is suing or is being sued.

Order 27 of Rule 1, as mentioned above, deals with suits by or against the Government or by officers in their official capacity. Rule 1 of Order 27
B C.P.C. says that in any suit by or against the Government, the plaint or the written statement shall be signed by such person as the Government may by general or special order appoint in that behalf and shall be verified by any person whom the Government may so appoint.

C It needs to be noted here that a legal entity - a natural person or an artificial person - can sue or be sued in his/its own name in a court of law or a Tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be
D sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of
E the suit/proceedings permit correction of the cause title so that the party before the court is correctly described; however a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order I of C.P.C. mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder
F of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order I C.P.C. provides remedy when a suit is filed in the name of wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary
G party at any stage of the proceedings.

The question that needs to be addressed is, whether the Chief Conservator of Forest as the petitioner/appellant in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh - a necessary party. In a lis dealing
H with the property of a State, there can be no dispute that the State is the

necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 of C.P.C., viz., in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the Government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or Tribunal. We make it clear that this a principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such.

Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India. It was not contemplated by the framers of the Constitution or the C.P.C. that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all inter-departmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and Union of India, this Court *in Oil and Natural Gas Commission* v. *Collector of Central Excise,* [1992] Suppl. 2 SCC 432 called upon the Cabinet Secretary to handle such matters. In *Oil and Natural Gas Commission and Anr.* v. *Collector of Central Excise,* (1995) Suppl. 4 SCC 541, this Court directed the Central Government to set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector

A undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the B Committee would function with status, control and discipline.

The facts of this appeal, noticed above, make out a strong case that there is a felt need of setting up of similar committees by the State Governments also to resolve the controversy arising between various C departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to set up a Committee consisting of the Chief Secretary of the State, the Secretaries of the concerned departments, the Secretary of Law and where financial commitments are involved, the Secretary of Finance. The decision taken by such a committee shall be binding on all the departments concerned and shall be the stand of the Government. D

Now, reverting to the facts of the case on hand, we are of the view that after the said statutory order of the Commissioner of Survey, Settlement and Land Record, the matter should have rested there. We have, therefore, no hesitation in coming to the conclusion that it was not only inappropriate but also illegal for the Chief Conservator of Forest, though he might have done E so in all good faith, to have questioned the order of the Commissioner of Survey, Settlement and Land Record before the High Court of Andhra Pradesh in Writ Petition (C) No. 3414 of 1982. The Chief Conservator of Forests as the petitioner can neither be treated as the State of Andhra Pradesh nor can it be a case of misdescription of the State of Andhra Pradesh. The fact is that F the State of Andhra Pradesh was not the petitioner. Therefore, the writ petition was not maintainable in law. The High Court, had it deemed fit so to do, would have added the State of Andhra Pradesh as a party; however, it proceeded, in our view erroneously, as if the State of Andhra Pradesh was the petitioner which, as a matter of fact, was not the case and could not have been treated as such. As the writ petition itself was not maintainable, it G follows as a corollary that the appeal by the Chief Conservator of Forests is also not maintainable. We are unable to accept the contention of Ms. Amreswari that merely because the concerned officer had obtained the permission of the Government to file an appeal, which is not placed before us, the writ petition and the appeal should be treated as an appeal by the H Government of Andhra Pradesh. The permission granted to the concerned

authority might be a permission to file an appeal which cannot reasonably be construed as authorisation to file the appeal in his own name, contrary to law. It could only be a permission to file the appeal in the name of the State of Andhra Pradesh in accordance with the provisions of the Constitution and the C.P.C. We may also record that in spite of the Pattedars taking objection to that effect at the earliest, no steps were taken to substitute or implead the State of Andhra Pradesh in the writ petition in the High Court or in the appeal in this Court.

Now, we shall deal with Civil Appeal No. 9097 of 1995, which arises out of the suit filed by the respondents herein. The respondents-plaintiff claimed in the suit that the land measuring 748.24 acres out of Survey No. 11 of Asadpur village and land measuring 45.20 acres out of Survey No. 168 of Malachintapalli village in Kollapur Taluk, Mahboobnagar District be declared as the patta lands of the plaintiffs and they be awarded compensation for the said lands, which was submerged in the Srisailam Project. The said lands were claimed to be ancestral patta lands and constituted private Home-Farm land of Plaintiff No. and his father and were being enjoyed as grazing land for their cattle and for cattle breeding farm. The plaintiffs had been paying land revenue in respect of those lands since the abolition of Jagir in 1949. The appellants denied that the suit land was patta land and home-farm land of the pattedars. It was pleaded that they were forest lands of the State. To establish their claim, the Pattedars produced two witnesses. The first witness was one of the Pattedars and the second was the Tehsildar of the Jagir Jatprole for the period November, 1937 to September, 1949. They also filed supplementary setwar, Exhibit A-1. During the period 1954 to 1958, permission was granted to the Pattedars by the Government for cutting forest wood; permission letters were filed as Exhibits A-2 to A-9 These documents show the exercise of right as owner over the suit lands. Exhibit A-10 was filed to prove that in the village map, the suit lands were shown as patta lands. In support of the plea for payment of the land revenue after the abolition of Jagir from 1951 to 1974, Exhibits A-11 to A-26 were filed. Those receipts related to Asadpur village. Exhibits A-27 to A-44 are receipts for payment of land revenue in respect of the land in Malachintapalli village. To prove that prior to the abolition of Jagirs, the suit lands were under the control of the last Jagirdar, Exhibits A-46 to A-50 were filed which relate to the period 1312 Fasli to 1328 Fasli and show the expenditure incurred by the last Jagirdar in respect of the suit lands. The pahani patrika for the period 1972-1973 and 1983-1984 were also filed as Exhibit A-53 to A-55 but they may not be really relevant because they relate to the period after the dispute had arisen

A between the parties. As against its evidence not an iota of evidence was placed on record by the Government to establish that the lands were taken over at the time of abolition of the Jagirs or that they form part of the forest area and/or otherwise vested in the Government. The trial court as well as the Division Bench of the High Court believed the oral and documentary evidence to decree the suit of the pattedars for declaration of title and for rendition of
B accounts. However, the relief of compensation was declined.

Mr. Salve has heavily relied upon the presumption in Section 110 of the Evidence Act to support the judgment and order under challenge. He submits that in view of the long uninterrupted possession of the pattedars title
C to the land in their favour has to be presumed and it would be for the appellant-State to prove that they are not the owners of the land. Ms. Amreswari has contended that, on the facts, the presumption is not attracted.

Section 110 of the Evidence Act reads thus:

D

> "110. Burden of proof as to ownership.—When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

E It embodies the principle that possession of a property furnishes *prima facie* proof of ownership of the possessor and casts burden of proof on the party who denies his ownership. The presumption, which is rebuttable, is attracted when the possession is *prima facie* lawful and when the contesting party has no title.

F This Court in *Nair Service Society Limited* v. *K.C. Alexander and Ors.*, A.I.R. (1968) S.C. 1165 observed,

> "the possession may *prima facie* raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known, when the facts disclose no title in either party, possession
G alone decides."

The pattedars proved their possession of the lands in question from 1312 Fasli (1902 A.D.) as pattedars. There is long and peaceful enjoyment of the lands in question but no proof of conferment of patta on the late Raja and the facts relating to acquisition of title are not known. The appellant-
H State could not prove its title to the lands. On these facts, the presumption

under Section 110 of the Evidence Act applies and the appellants have to prove that the pattedars are not the owners. The appellants placed no evidence on record to rebut the presumption. Consequently, the pattedars, title to the land in question has to be upheld. A

We have gone through the judgement of the trial court as also of the High Court. We have perused the notification issued under Section 29 of the Forest Act. It shows that as many as fourteen villages are enumerated therein. Villages Asadpur and Malachintapalli do not figure in the notification. Even otherwise also, the notification does not show anything more than the fact that the Government has formed a protected forest area. That by itself does not extinguish the rights of the private owners of the land nor does it show that the lands in question vest in the State. A plain reading of the statutory order passed by the Commissioner of Survey, Settlement and Land Record under Section 166-B of the Land Revenue Act on December 5, 1981 places the matter beyond doubt that the suit lands were patta lands of the Pattedars. For all these reasons, in our view, the High Court has committed no error in confirming the said order of the Commissioner of Survey, Settlement and Land Record and the Judgment and decree of the trial court. B C D

Inasmuch as no cross appeal was filed by the said pattedars-respondents in regard to the denial of relief of the compensation, the interim order passed by this Court on December 1, 1994 directing payment of one-half of the compensation shall stand vacated. E

In the result, the appeals are dismissed with costs.

N.J. Appeals dismissed.