REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7759-7760 OF 2014

GULF OIL CORPORATION LTD. .....APPELLANT(S)

VERSUS

THE STATE OF TELANGANA & ORS. .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 7761 OF 2014

SRI UDASIN MUTT .....APPELLANT(S)

VERSUS

GULF OIL CORPORATION LTD. & ORS. .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The challenge in Civil Appeal Nos. 7759-7760 of 2014 is to an order dated 7.3.2013 passed by the Andhra Pradesh High Court in Writ Petition No. 31893 of 2011 whereby the appellant herein i.e., Gulf Oil Corporation Limited[1] was ordered to be evicted under the

1 For short, the 'Lessee'

provisions of The Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987[2]. The lessee claimed leasehold rights on the land admeasuring 540 acres and 30 guntas situated at village Kukatpally, Hyderabad.

2. Civil Appeal No. 7761 of 2014 has been preferred by Sri Udasin Mutt[3], the lessor of the said land, arising out of Writ Petition No. 8005 of 2012. The said writ petition was decided along with the writ petition filed by the lessee. The Mutt has claimed mesne profits in terms of Section 83(6) of the 1987 Act. However, the writ petition was disposed of with a direction to consider the request of the lessee under Rule 15 of the Telangana Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Rights (Other than Agricultural Land) Leases and Licenses Rules, 2003[4], published vide Government Order Memo No. 866 dated 8.8.2003.

3. The dry soil land measuring more than 540 acres and 30 guntas was granted as inam land by the Nizam of Hyderabad to the Mutt somewhere in the year 1873. The Mutt entered into an agreement of lease with M/s Indian Detonators, predecessor of the lessee, on 23.07.1964 in respect of 143 acres of inam lands, bearing survey no. 1010/8 to 1010/10. The lessee, claiming to be the successor-in-interest of M/s Indian Detonators, relies on the permission said to be granted by the Government to enter into lease of the inam land on

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2 For short, the '1987 Act'
3 For short the 'Lessor' or 'Mutt'
4 For short, the '2003 Rules'

24.02.1964.

4. The lessor thereafter entered into an agreement with M/s Indian Detonators on 14.9.1966 to take on lease 257 acres and 19 guntas of the inam land. The supplementary lease deed dated 21.03.1969 was also executed for an area of 2 acres and 32 guntas of land.

5. The Commissioner, Endowments Department communicated to the Secretary to Government, Revenue (Endowments) Department on 29.4.1975 to sanction proposed long lease of 99 years of 137 Acres 19 guntas of the land. It was also communicated that since the lease was exceeding 6 years, therefore, sanction of the Government is necessary under Section 70 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1966[5]. Section 70 of the 1966 Act reads thus:

> "70. Lease, sale, etc., of inams to be void in certain cases:-
>
> (1) Any lease for a term exceeding six years and any gift, sale, exchange or mortgage of an inam land granted for the support or maintenance of a charitable or religious institution or endowment or for the performance of a religious or public charity or service, shall be null and void unless any such transaction, not being a gift, is effected with the prior sanction of the Government.
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> (2) Such prior sanction may be accorded by the Government where they consider that the transaction is-
>
> (i) necessary or beneficial to the institution or endowment;
> (ii) consistent with the objects of the institution or endowment and;
> (iii) the consideration thereof is reasonable and proper.

5 For short, the '1966 Act'

(3) The provisions of this section shall not apply to any inam land in the Andhra Area of the State."

6. It was on 10.05.1976, the Government of Andhra Pradesh accorded sanction for lease of land measuring 137 acres and 19 guntas to M/s. Indian Detonators Limited. Subsequently, on 20.04.1978, the lessor entered into another lease deed with M/s Indian Detonators Limited for a period of 99 years for land measuring 137 acres 19 guntas.

7. A perusal of the lease deed dated 23.07.1964 in respect of 143 acres and the lease deed dated 14.09.1966 in respect of 257 acres and 19 guntas of land specifically mention that the lease are of inam land. A summary of the various lease deeds executed by the lessor are produced hereinunder:

Sl. No.	Lessor	Lessees	Document No. & Date	Sy. No.	Extent
1	Mahant Baba Seva Das	M/s Indian Detonators Limited	366 23.7.1964	1010/8 to 1010/10 1010/11 (p) 1010/12 to 1010/15 1024, 1026	143-00
2	-do-	-do-	889 14.09.1966	1010/1 to 1010/7 1026, 1024, 1029, 1030, 1038, 1039, 1010, 1041	257-19
3	Udasin Mutt Mahant Baba Gynan Das Ji	M/s Indian Detonators Limited	Supplementary lease deed 21.3.1969	1010/11	2-32
4	Mahant Baba Dynan Das Chela of Mahant Puran Das	M/s I.D.L. Chemical Ltd	1817/75 28.9.19 78	1028, 1036, 1037, 1042, 1066, 1067, 1068, 1069 and 1070	137-19
	Total				540.30

8. The 1987 Act came into force on 21.04.1987, repealing the 1966 Act. Section 82 of the 1987 Act has a non-obstante clause so as to override and cancel any lease of agricultural land other than lease to a landless poor person. Section 82 of the 1987 Act reads thus:

> "82. Lease of Agricultural Lands:-
>
> (1) Any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowment subsisting on the date of commencement of this Act shall, notwithstanding anything in any other law for the time being in force, held by a person who is not a landless poor person stands cancelled.
>
> (2) xxx xxx xxx
>
> (3) The authority to sanction the lease or licence in respect of any property or any right or interest thereon belonging to or given or endowed for the purpose of any charitable or religious institution or endowment, the manner in which and the period for which such lease or licence shall be such as may be prescribed.
>
> (4) Every lease or licence of any immovable property, other than the Agricultural land belonging to, or given or endowed for the purpose of any charitable or religious institution or endowment subsisting on the date of the commencement of this Act, shall continue to be in force subject to the rules as may be prescribed under sub-section (3).
>
> (5) [6][The provisions of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (Act XVIII of 1956) and the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (Act XXI of 1950) shall not apply to any lease of land belonging to or given or endowed for the purpose of any charitable or religious institutions or endowment as defined in this Act.]"

9. The Hyderabad Abolition of Inams Bill (Bill No. XVIII of 1954) was published in Hyderabad Gazette Extraordinary No.86 on 10.04.1954.

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6 Added by Act No. 27 of 2002, w.e.f. 26-8-2002.

One of the objects for the enactment of such legislation was the abolition of all inams, other than village service inams and inams held by religious and charitable institutions. In pursuance of such Bill, the Hyderabad Abolition of Inams Act, 1955[7] came to be enacted. Such Act received the assent of the President on 16.07.1955 and was published in the Hyderabad Gazette Extraordinary No. 90 of 20.07.1955. The enactment is now known as the Telangana Abolition of Inams Act, 1955. Initially, the Inams Abolition Act was not applicable to inams held by or for the benefit of charitable and religious institutions [Section 1(2)(i)]. The said provision was however deleted by Andhra Pradesh (Amendment) Act, 1985 (Act No. 29 of 1985) with effect from 26.12.1985. The Inams Abolition Act was then subsequently amended vide Andhra Pradesh (Amendment) Act, 1994 (Act No. 19 of 1994), whereby a proviso was inserted to Section 4(1) of the Inams Abolition Act with retrospective effect from 26.12.1985, the date when Section 1(2)(i) was deleted. The inserted clause and other relevant provisions of the said Inams Abolition Act read thus:

> [8]"[1(2) It extends to the whole of the Hyderabad State and shall be applicable to all inams except –
>
> (i) inams held by or for the benefit of charitable and religious institutions;
> (ii) inams held for rendering village service useful to the Government or to the village community including sethsendhi, neeradi and balutha inams.]
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> xx xx xx

7 Inams Abolition Act

8 omitted by A.P. (Amendment) Act, 1985 (Act No. 29 of 1985) w.e.f. 26.12.1985

3. Abolition and vesting of inams and the consequences thereof-(1) Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant, sanad, order or other instrument, Act, regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil, Revenue or Atiyat Court, and with effect from the date of vesting, all inams shall be deemed to have been abolished and shall vest in the State.

(2) Save as expressely provided by or under the provisions of this Act and with effect from the date of vesting, the following consequences shall ensue namely:-

xxx xxx xxx

(c) all such inam lands shall be liable to payment of land revenue;

(d) all rents and land revenue including cesses and royalties, accruing in respect of such inam lands, on or after the date of vesting, shall be payable to the State and not to the Inamdar, and any payment made in contravention of this clause shall not be valid;

4((1) xxx xxx xxx

[9][Provided that where inams are held by or for the benefit of charitable and religious institutions no person shall be entitled to be registered as an occupant under sections 5, 6, 7 and 8 and the institution alone shall be entitled to be registered as an occupant of all inam lands other than those specified in clauses (a) and (c) above without restriction of extent to four and half times the family holding and without the condition of personal cultivation:

Provided further that where any person other than the concerned charitable or religious institution has been registered as an occupant under sections 5, 6, 7 and 8 after the commencement of the Andhra Pradesh (Telangana Area) Abolition of Inams (Amendment) Act, 1985 such registration shall and shall be deemed always to have been null and void and no effect shall be given to such registration]"

9 inserted by A.P. (Amendment) Act, 1994 (Act No. 19 of 1994) with retrospective effect from 26.12.1985.

xxx xxx xxx

> 9. Vesting of certain buildings and inam lands used for non-agricultural purposes.-
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> (1) Every private building, situated within an inam shall, with effect from the date of vesting, vest in the person who owned it immediately before that date.
>
> (2) Where an inam land has been converted for any purpose unconnected with agriculture, the holder of such land shall be entitled to keep the land provided that such conversion was not void or illegal under any law in force.
>
> (3) The vesting of private buildings or lands under sub-section (1) or (2) shall be subject to the payment of non-agricultural assessment that may be imposed by Government from time to time."

10. Section 82 of the 1987 Act statutorily cancelled the lease deeds if endowed for the purpose of any institution. Section 75 of the 1987 Act declares that any lease and any gifts, sale, exchange or mortgage of an inam land, granted for the support or maintenance of charitable or religious institution, or endowment or for the performance of a religious or public charity or service shall be null and void, unless such transaction, not being a gift, is affected with prior sanction of the Government. A perusal of the facts would show that prior approval was only in respect of 137 acres 19 guntas of land on the basis of which registered lease deed was executed on 20.04.1978. However, lease deed dated 23.07.1964 in respect of 143 acres, lease deed dated 14.09.1966 in respect of 257 acres 19 guntas and supplementary lease deed dated 21.3.1969 in respect of 2 Acres 32 guntas were not preceded with any prior sanction.

Though there is a note of the Second Secretary of the Government that lease for 99 years would not amount to transfer of property, but such note is on the file of the Government and had not been communicated to any of the interested parties.

11. It is submitted that the lessee faced no issues till November 2006 when the previous Mahant Baba Sagardas was unceremoniously removed. It was on 24.08.2007, a notice on behalf of Sri Arun Das ji, Mahant of the Mutt, for delivery of vacant possession, was served treating lessee as an encroacher. It was later on 24.12.2007, the Mutt wrote to the Assistant Commissioner (Endowments) for eviction of the lessee, *inter alia* on the ground that a graveyard on a land measuring 20 acres has come up and thus there is a violation of the terms of the lease. The Assistant Commissioner called for an inspection report from the office of the Inspector, Endowments Department. A report was submitted on 29.01.2008, communicating to the Assistant Commissioner, Endowments Department that the three lease deeds are without prior Government approval. Only the lease deed dated 20.04.1978 was with prior approval. It was communicated that the 4 lease deeds have totally become null and void as per the 1966 Act, 1987 Act and the Rules framed under the Government Order No.866 dated 08.08.2003.

12. The proceedings leading to the present appeals were initiated when a show cause notice dated 20.12.2008 was issued by Deputy Commissioner, Endowments Department, Hyderabad. The proceedings initiated in pursuance of show cause notice to the

lessee was assigned an Original Application No.21/2008 before the Deputy Commissioner, Endowments Department, later renumbered as OA No. 579 of 2010 after the constitution of the Endowments Tribunal. The lessee was asked to remove the encroachment upon the land belonging to the Mutt.

13. It has been argued that the Endowments Tribunal passed a patently perverse order of eviction on the ground that the leased land was agricultural in nature and therefore, the lease deed was void as per Section 82 of the 1987 Act. The writ petition against the order passed by the Endowments Tribunal remained unsuccessful. It is the said order passed in the writ petition which is the subject matter of challenge in the present appeals.

14. The argument of Mr. Harish Salve, appearing for the lessee, is that it was neither asserted by the Mutt, nor any issue was framed regarding treating the land as agricultural land. Therefore, in the absence of any evidence of the land being an agriculture land, the finding recorded by the Endowments Tribunal and affirmed by the High Court suffers from patent illegality as without any plea or evidence, a finding has been returned to declare the lease deed executed in favor of the appellant as cancelled on the ground that the lease was of an agricultural land.

15. Mr. Salve referred to an order passed by the Joint Collector in an appeal under Section 24 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, wherein a finding was returned that

the land in question was converted into for non-agricultural use before 1973. The order under challenge in appeal was an order passed by the Revenue Divisional Officer dated 27.11.2004.

16. It is argued that the order of the Joint Collector is final and act as an estoppel to the effect that the leased inam lands are non-agricultural in nature and the factum of the Endowments Tribunal having delved into the same by giving a perverse finding is impermissible. Reliance is placed upon the judgment of this Court reported as ***Hope Plantations Ltd.*** v. ***Taluk Land Board, Peermade and Anr.***[10] that if an issue has been finally determined, parties cannot dispute such finding.

17. The issue as to whether the land is agricultural land was raised for the first time in the written arguments submitted by the Mutt before the Endowments Tribunal relying upon a report of the Assistant Commissioner (Endowments). It is submitted that the argument raised by the Mutt was dealt with in the written arguments raised by the lessee specifically contending that a new plea was raised for the first time in the written arguments that the land was agricultural land. Reliance is placed upon judgment of this Court reported as ***Bachhaj Nahar*** v. ***Nilima Mandal & Anr.***[11] wherein it was held that once a particular plea is not raised and the defendants had no opportunity to resist or oppose such a relief, it would lead to miscarriage of justice. Reliance was also placed upon a judgment of

10 (1999) 5 SCC 590
11 (2008) 17 SCC 491

this Court reported as ***Ram Sarup Gupta (Dead) by Lrs.*** v. ***Bishun Narain Inter College & Ors.***[12] .

18. It is argued that the distinction between agricultural and non-agricultural land is evident from the reading of Section 3 of the Andhra Pradesh Non-Agricultural Assessments Act, 1963, which provides for assessment of non-agricultural land. The A.P Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 repealed the 1963 Act by keeping the distinction between the agricultural and non-agricultural land. Reference was made to Section 28 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli that the land in Section 1(b) includes all kinds of benefits pertaining to land and that land revenue is paid for non-agricultural land as well. It has been argued that Section 82 would be applicable only if lease of land is *used* for agricultural purpose alone. Reliance was placed upon the judgments of this Court reported as ***Commissioner of Wealth Tax*** v. ***Officer in Charge (Court of Wards)***[13], ***Sarifabibi Mohmed Ibrahim (SMT)*** v. ***Commissioner of Income Tax, Gujrat***[14] and ***ITC Limited*** v. ***Blue Coast Hotels Limited***[15] dealing with the agricultural land in the taxation laws such as wealth tax and income tax. It is further contended that the lease deeds executed for a period of 99 years could not be terminated in violation of the terms of a notice period of 5 years, as well as on a non-existing ground of termination of

12 (1987) 2 SCC 555
13 (1976) 3 SCC 864
14 (1993) Supp 4 SCC 707
15 (2018) 15 SCC 99

lease. It is also argued that the report of the Assistant Collector, Endowments is on inquiry and not evidence before the Tribunal which can be made basis of terminating the lease in favor of the lessee.

19. It is contended that the notice for termination of lease was issued on 11.10.2007 on the ground that Mutt had entered into lease agreements with IDL and IDL Chemicals Limited and not with the appellant; the appellant abandoned most of the land, thereby allowing encroachers to occupy the land and that the land of Mutt is being converted into burial grounds.

20. It was averred that eviction proceedings can only be in consonance with the terms of the eviction notice which allows no room for vagueness and ambiguity. In the notice, no issue qua the nature of the leased inam lands was raised but was surreptitiously supplanted by the Mutt in its written arguments. The same is erroneously considered and decided by the Tribunal and upheld by the High Court. It is only Section 75 of the 1987 Act that would be applicable which contemplates prior permission of the Government in the case of inam lands.

21. It is argued that evidence can be led in support of the plea raised. Since there is no plea raised by the Mutt that the land is agricultural land, therefore, no amount of evidence in absence of plea can be considered by the Court. Reliance is placed upon ***Union of India*** v.

Ibrahim Uddin & Anr.[16], and ***Biraji alias Brijraji & Anr.*** v. ***Surya Pratap & Ors.***[17].

22. The appellants further argued that any finding of a court of law in the absence of evidence cannot be sustained. Such finding based on a document which is not placed on record is violation of principles of natural justice, fair play and fairness. Reliance is placed upon ***Mahesh Dattatray Thirthkar*** v. ***State of Maharashtra***[18]. It is argued that since the report of the Inspector dated 29.1.2008 was not placed on record, therefore, the lessee was not given a chance to rebut the assertion that the land is an agricultural land.

23. It has been further argued that the impugned order of the High Court is perverse and that the judgment of the High Court in ***Siddartha Academy of General and Technical Education*** v. ***Deputy Commissioner of Endowments***[19] has been wrongly relied upon. In fact, in the said judgment, the land was agricultural land. This Court in SLP (Civil) Nos. 25617-25619 of 2013 has permitted ***Siddartha Academy*** to withdraw the SLP after the Government passed the necessary orders, i.e., granting permission to continue with the lease. It was contended that Section 82 does not annul governmental permissions granted prior to the commencement of the Act. Therefore, the same could not be deemed to be cancelled in terms of the provisions of Section 82(1)

16 (2012) 8 SCC 148
17 (2020) 10 SCC 729
18 (2009) 11 SCC 141
19 2010 SCC Online AP 461

of the 1987 Act. It is stated that the lease deeds dated 23.7.1964 and 20.4.1978 make it abundantly clear that the said lease deeds were entered into by the appellant and Mutt with prior permission of the Government. It is further argued that the lease deeds were for the purpose of construction and running a factory, therefore, the land cannot be said to be an agricultural land.

24. Mr. Salve further relied upon the communication dated 17.11.1994 from Hyderabad Urban Development Authority to contend that the land falls within the Zonal Development Plan for Kukatpally Zone approved on 25.04.1986 and is earmarked as an industrial area as per the said Plan. Thus, it was argued that Endowments Tribunal wrongly held the land to be agricultural despite the reason that no issue was framed. The finding is based on the basis of an observation in the order passed by the High Court in Writ Petition No. 24440 of 2010 filed by the lessee. It is also argued that the judgment of the High Court in ***Siddartha Academy*** that the land is agricultural and lease stands terminated is legally untenable. The said order was affirmed in appeal on 1.3.2013[20], holding that the use of the land for non-agriculture purpose is immaterial for the purpose of Section 82 of the 1987 Act.

25. It has been argued that Urban Land (Ceiling and Regulation) Act, 1976 was passed in the year 1976 w.e.f. 17.2.1976 and that the lands at Kukatpally became urban lands. Therefore, the urban lands are the lands situated within the limits of an urban agglomeration

20 Writ Appeal Nos. 488, 489 and 490 of 2011

and referred to as such in the master plan and where there is no master plan, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small-town committee, a cantonment board or a panchayat. Therefore, with the enactment of the aforesaid Act, the agricultural land changed to non-agricultural urban land.

26. It is contended that the term of payment of land revenue are standard boiler plate clauses and no land revenue has ever been paid by the lessee for the leased inam lands.

27. The arguments raised by the lessee has been controverted by the Mutt that nature of land was agriculture and by operation of Section 82 of the 1987 Act, the lease stands statutorily cancelled. It is argued that the nature of land is important to be considered and not the purpose to which the land is to put to use by the lessee. It is further pointed out that validity of Section 82 has been upheld by this Court in a judgment reported as ***State of A.P.*** v. ***Nallamilli Rami Reddy & Ors***.[21], wherein it was held that the object of Section 82 of the 1987 Act is to protect the interests of the religious institutions and to safeguard such institutions from the “grip of rich and powerful persons”.

28. It is also pointed out that the 1987 Act was preceded by a report made by a Commission headed by Justice C. Kondaiah, former Chief Justice of the Andhra Pradesh High Court. Para 1.18.1 of the report

21 (2001) 7 SCC 708

reads thus:

> "It is stated that all concerned who are interested in the charitable or religious institutions have stated that the temple authorities are facing innumerable difficulties in the management of the landed properties of the institutions, the income is very meagre, not worth-mentioning, and in some cases it is nil, although the institution owns large extent of lands. Reasons thereof is the provisions of the Tenancy Act, attitude of the persons in possession and enjoyment for several years, the lands belonging to these institutions are mostly in the hands of the rich and powerful sections against whom the concerned authorities are experiencing difficulties to dispossess them from the lands. The trustees or archakas are in enjoyment of the lands kept Benami in the names of their relations, etc. The authorities also are in the collusion with them. The rents paid by the tenants are nominal fixed decades back. The Estimates Committee also expressed the same opinion."

29. It is averred that the Endowments Tribunal and the High Court have concluded that the lease stands statutorily terminated in terms of Section 82(1) of the 1987 Act. The Khasra Pahanis are prepared only in respect of agricultural land under Rule 8 of Andhra Pradesh (Telangana Area) of Land Census Rules, 1954. Such Rules have been framed under Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950. The Khasra Pahanis show the land as dry agricultural land and as cultivable and uncultivable. The nature of the land is described as "sand soil", "irrigability", "trees" and "kharif". The Khasra Pahanis for the year 1954-55 and 2003-04 show that the land is dry agricultural land and also shows as cultivable and uncultivable land. The land is described as "sand soil", "irrigability", "trees", "kharif", which shows that reference is made to agricultural lands apart from the fact that the lands were

inam lands. It is further pointed out that land revenue of Rs.714-27 was demanded from the lessee on 04-08-1980 by the Mutt in terms of the lease deeds dated 23.07.1964, 14.09.1966, supplementary lease deed dated 21.03.1969 and lease deed dated 20.04.1978.

30. The Mutt also relied upon notifications dated 25.04.1963 and 27.05.1975 published under Section 4 of the Land Acquisition Act, 1894 intending to acquire the land for the purpose of Andhra Pradesh Housing Board. The land therein is described as a dry land. It is further pointed out that the acquisition has not been concluded but the notification has been referred to for pointing out the nature of the land. The order dated 30.11.1976 passed by the A.P. Land Reforms Tribunal under Section 8(1) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 shows that the land was considered to be within the ambit of the statute dealing with the ceiling of the agricultural land, though the land was exempt from the surplus area proceedings under Section 23 of the aforesaid Act.

31. The lease deeds further contemplate payment of land revenue at the enhanced rate for use of land for non-agricultural purpose. The use of land for non-agricultural purposes leads to enhance land revenue. It is contended that the Assistant Commissioner has submitted a report on 16.12.2008 wherein the land in question was found to be agricultural and was the basis to proceed under the 1987 Act.

32. It is also argued that the Competent Authority, the then Deputy Commissioner could initiate suo moto proceedings under Section

82(1) of the 1987 Act. It is also argued that no application was submitted by the lessee to convert the land to non-agricultural use under Rule 70 of the Andhra Pradesh (Telangana Area) Land Revenue Rules, 1951. It is also argued that the argument of the lessee before the Endowments Tribunal was that the leased land in question, though registered as agricultural land, but has been used for non-agricultural purposes. The Tribunal thus held that even if land is being used for non-agricultural purposes, it is still an agricultural land. The relevant extract from the order reads thus:

> "6). (ii). (b). (i). (a). .....On the other hand, the contest of the Respondents is that the lease lands in question are though registered as agricultural lands, from purpose of lease and in use by the lessees for than agricultural as observed in Ex.83 order point-2 at pages 8 and 9, it is only a non-agricultural immovable property lease to govern by Sec.82(4) of the Act, that there is no finding by the High Court to hold the lands in question as agricultural in the writ petition 24440/2010 order dated 20.1.2011 and in the absence of which an observation even between the parties inter se is not Res-Judicata or obiter or estoppel from disputing now the nature of the lease lands....
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> 6). (ii). (b). (i). (d). In fact, the petition schedule lands of the 2nd Applicant Math is recorded as per the Ex.A17 pahanies and A18 G.Os as Inam and Agricultural lands. Since the petition schedule lands are in use after Ex.A1-4 lease deeds by Respondents for non-agricultural (commercial/industrial) purposes as observed in Ex.83 order point-2 for consideration at pages 8 and 9, whether it changes the nature of the land from agricultural to non-agricultural.....Thus, the subject matter of the leases covered by Ex.A1-4 are the agricultural lands though in other than agricultural purposes in use by any of the Respondents and the leases stand terminated by statutory operation of law from the above as per Sec.82(1 and 2) of the Act from the time the Act, 30/87 came in to force for none of the Respondents are within the meaning of landless poor agriculturists."

33. It is contended that Section 160 of the 1987 Act gives it an over-riding effect and that the provisions of 1987 Act shall apply notwithstanding any compromise agreement, scheme, judgment, decree or order of a Court, Tribunal or other authority. Thus, by necessary implication, the leases would be governed by the statute.

34. It is argued that the lessees were fully aware of the issue before the Tribunal that it is a statutory cancellation of lease of agricultural land. The Mahant of the Mutt was confronted with the document Ex.R-3, subsequently named Ex.B-3, which was an order passed by the Joint Collector in appellate proceedings on the issue of grant of occupancy rights wherein the finding was returned that the use of land was for non-agricultural purposes. In the evidence affidavit, no document was produced showing that the nature of the land was non-agricultural. In Writ Petition No. 24440 of 2010 filed by the lessee challenging the jurisdiction of the Tribunal, the High Court dealt with the arguments raised by the Mutt, respondent No. 5 in the said proceedings, that the lease is of agricultural land. The argument recorded is as under:

> "9. .....The counsel would place reliance on Section 82 and contend that in any event the lease stood cancelled by virtue of sub-section (1) thereof, which provides that a lease of agricultural land held by other than a landless poor person on the date of commencement of the Act shall notwithstanding any other law for the time being in force stands cancelled.....
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> 10. The Learned Senior Counsel for the Petitioner in reply would submit that the previous W.P. No.9681 of 2008 was not concerned with the issue relating to formation of opinion and if it is accepted that the subject land is agricultural land, then the Rules issued in G.O.Ms. No.866 upon which earlier refer-

> ence was placed have no application to the subject lands……..”

35. Still further, the High Court had called for the record of the Tribunal in the abovesaid writ petition (WP No. 24440 of 2010). It quoted from the reports dated 29.1.2008 of the Inspector and dated 24.1.2008 of the Assistant Director and recorded as under:

> “The lands and in question are agriculture lands. As per Section 82(1) any lease of the Agriculture land belong into any institution are held by a person who is not a landless poor person stands cancelled. This Section is upheld by the Honourable Supreme Court.”

> Further I submit that during the scrutiny of the proposals submitted u/s 83 the Amended Act 33/2007 has come into force and the powers vested in the Deputy Commissioner U/s 83 of the Act 30/87 are conferred to the Endowments Tribunal. Since it has not been constituted, the proposals have not been submitted to the Deputy Commissioner, Endowments Department, Hyderabad for initiating Action U/s 83.”

36. The order passed by the High Court on 20.1.2011 has attained finality. The fact that the land is agricultural land was recorded in the order passed, therefore, the lessee cannot plead ignorance of the fact that the land in question was not an agricultural land.

37. It is averred that in the written submissions submitted before the Tribunal, the stand of the lessee is not that it was not aware of the report of the Assistant Commissioner or that no issue was framed on the land being agricultural in nature, therefore, not covered under Section 82(1) of the 1987 Act. The specific issue framed by the Tribunal was whether the leases are not in subsistence by virtue of Section 82 of the 1987 Act. It is further contended that the

parties have gone to trial fully aware of the real issues involved, then even assuming that the issue was not framed, it is not open to the parties to challenge the procedure. Reliance is placed upon ***Swamy Atmananda & Ors.*** v. ***Sri Ramakrishna Tapovanam & Ors.***[22], ***Nedunuri Kameswaramma*** v. ***Sampati Subba Rao***[23], ***Nagubai Ammal & Ors.*** v. ***B. Shama Rao & Ors.***[24].

38. It is argued that the Tribunal has rightly held that the letter dated 24.2.1964 (Ex.B-40) or the order dated 10.5.1976 (Ex.A-16) does not amount to valid sanction as there is no application of mind to show how it is necessary or beneficial for the Mutt. The letter dated 24.2.1964 (Ex.B-40) is not addressed to either of the parties and that in terms of Rule 331 of the Hyderabad Endowment Rules, lease for 99 years could not be granted. Moreover, it is stated that the order of the Joint Collector under the Inams Abolition Act dated 25.7.2007 is erroneously relied upon by the lessee. The finding that the land was being used for non-agricultural purpose is an incidental finding in the context of a different legislation and therefore cannot be applied to interpret Section 82 of the 1987 Act. It is also contended that the Inams Abolition Act has no application to the land in question in view of Section 1(2)(i) of the said Act till 26.12.1985, and thereafter by virtue of proviso to Section 4(1) of the said Act which exempts the charitable and religious institutions from the operation of the Inams Abolition Act.

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22 (2005) 10 SCC 51
23 AIR 1963 SC 884
24 AIR 1956 SC 593

39. It is also argued that the lessee has not made any application for use of the land for non-agricultural purpose without prior permission under Andhra Pradesh (Telangana Area) Land Revenue Rules, 1951 and that no document has been produced to prove the nature of the land as non-agricultural.

40. The argument of the State is that the term 'agricultural land' as mentioned in Section 82(1) of the 1987 Act has nothing to do with the purpose of which the leased lands were being used. Therefore, whether the lands were being used for agricultural purpose or not is irrelevant for the application of Section 82(1) of the 1987 Act. The object and purpose of the 1987 Act is to safeguard the interests of the charitable and religious institutions and to revert and resume the agricultural lands of the religious institutions to them for their own benefit and well-being. Therefore, the legislature has sought to statutorily cancel all leases of 'agricultural land' belonging to charitable and religious institutions. Reliance was placed upon judgment of the High Court in ***Siddartha Academy***. It is also argued that Section 82(4) of the 1987 Act deals with lease of any immovable property other than agricultural land belonging to or given or endowed for the purpose of any charitable or religious institution subsisting on the date of commencement of the 1987 Act and states that the same shall continue to be in force subject to the rules as may be prescribed under sub-section (3). Rule 15 of the 2003 Rules is to the following effect:

> "15. Any lease or license granted, continued or allowed to be

> continued otherwise than in accordance with rules shall be null and void:
>
> Provided that, any lease or license subsisting by the date of notification of these rules of any immovable property or right may be continued according to such terms and conditions and also on the rent payable thereto, till the expiry of the period of the lease or license as may be decided upon by the Additional Commissioner on a proposal received from the Executive Officer or Chairman or the Person-in-Management as the case may be."

41. It is thus sought to be contended that in respect of agricultural land, the lease stands cancelled whereas in respect of land other than agricultural land, the property can be used only in terms of Rule 15 of the 2003 Rules.

42. The order of Joint Collector dated 25.8.2007 was argued to not operate as estoppel as the issues are different. The issues before the Joint Collector were in respect of nature of lands as inam lands and if the said lands were used as agricultural lands on the crucial date. The issue was not whether the lands are agricultural lands on the appointed date that is 1.11.1973.

43. It is therefore contended that the lessee had sufficient knowledge, awareness and opportunity to deal with and make representations in respect of the issue relating to leased lands being 'agricultural lands' and hence, the leases stand statutorily cancelled. The report of the Assistant Commissioner of Endowment referred to by the High Court in Writ Petition No. 24440 of 2010 is relied upon. Even in the written arguments, the issue was raised that the lands in question are agricultural lands. In fact, the lessee has referred to

evidence with respect to agricultural lands without ever attempting to lead evidence on this issue. It is also argued that the Endowments Tribunal has framed an issue as to whether the lease deeds are in subsistence owing to the provisions of Section 82 of the 1987 Act.

44. We have heard learned counsel for the parties at length. The question required to be examined is whether in terms of Section 82 of the 1987 Act, lease of agricultural land stands statutorily cancelled. It is not required to be examined at this stage as to whether the lessee is the present lessee on account of change of the name of original lessee M/s Indian Detonators Limited or IDL Chemicals Limited. To determine the primary question, the following aspects need to be examined:

(a) What is the effect of the order dated 25.8.2007 passed by the Joint Collector under the Inams Abolition Act?

(b) Whether the land in question is agricultural land to which the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 is applicable and the lease in favor of the lessee stands cancelled in terms of Section 82(1) of the Act?

(c) Whether the parties went to trial with the knowledge that the land in question was agricultural land in the proceedings before the Endowments Tribunal?

(a) <u>What is the effect of the order dated 25.8.2007 passed by the Joint Commissioner under the Inams Abolition Act?</u>

45. The Inams Abolition Act abolished all inams (grants) by the Nizam. The Act contemplates adjudication of matters in relation to grant of occupancy rights and certificates in respect of inam lands covered

by the Act and vested with the Government, inquiry into the nature and history of such lands, determination of compensation payable to the Inamdar and apportionment thereto. Sections 4 to 8 of the Inams Abolition Act came into force on 1.11.1973 i.e., the date of grant of occupancy rights under the Inams Act. It appears that the Mutt entered into an agreement with one Kalyani Narsing Rao. He filed an application for grant of occupancy rights. Such application was allowed by the Revenue Divisional Commissioner on 27.11.2004. The Revenue Divisional Officer was considering an application for issuance of occupancy rights certificate to the general power of attorney holder of the Mutt. The application was allowed and it was concluded as under:

> "In view of the aforesaid findings the case has been examined with reference to the Act and Rules in force. It is revealed that as per the material on record, the lands in question are inam lands and the applicants are owners. In view of the aforesaid the application seeking the issuance of Occupancy Rights Certificate is allowed as prayer for.
>
> In view of the above and also as per the Judgment of Honourable High Court of Andhra Pradesh, in WP No. 9497 of 2003, dated 29-7-2004, the land in question, falls under section 9(2) of the AP (T.A) Abolition of Inams Act, 1955. Therefore, the applicants are declared as owners of the land in question under section 9(2) of the AP (T.A) Abolition of Inams Act, 1955."

46. In an appeal under Section 24 of the Inams Abolition Act, a finding was returned that the land in question was converted into for non-agricultural use before 1973. The issue no. 2 therein was to the effect whether the land in question was under agriculture as on the crucial date. The finding on the said issue is that it was being used

for non-agricultural purposes. The Inams Abolition Act was enacted to abolish the inams and to confer occupancy rights to the tiller. Since the land was an inam land given to the charitable and religious institutions, it was found to be exempt from the operation of the Inams Abolition Act. The Joint Collector held that the land is an inam land and in terms of proviso to Section 4(1) of the Act, the inam was held by or for the benefit of charitable and religious institutions, therefore, no person shall be entitled to be registered as an occupant and the institution alone shall be entitled to be registered as the occupant. It is the said order of the Revenue Divisional Officer which was set aside by the Joint Collector. It was held as under:

> "The property was given by Nizam for the Mutt but not to Sagar Das. It is clear that Mutt only can sell the property after taking prior permission from the Endowment Department but not the Mahanth in his individual capacity. Baba Sagar Das is not an institution and he is only a Mahanth appointed by Endowment Department. The Revenue Divisional Officer has considered irrevocable G.P.A. and the decree obtained by Kalayani Narsinga Rao and concluded that Sagar Das is entitled to 60% and K. Narsinga Rao is entitled for 40% share in the properties of Mutt and further held that the G.P.A. holder can maintain the case before him under Rule 5 of the Rules under A.P. (T.A.) Abolition of Inam Rules, 1955 declared the applicants K. Narsinga Rao and Baba Sagar Das as owners of the properties belonged to Mutt. The order of the Revenue Divisional Officer is based on assumption and presumption and the orders speaks that there are no documents marked and no evidence was adduced on either side.
>
> The Commissioner of Endowment Department vide its Proceedings No.F1/47775/2004-I dated 25-11-2006 has removed the said Sagar Das from the post of Mahant of Udasin Mutt Hussaini Alam, Hyderabad and framed charges for alienating the properties including execution of the G.P.A.

dated 1-9-1981 in favour of K. Narsinga Rao and misleading the Revenue Divisional Officer and acted adverse to the interest of the institution.

xxx xxx

Therefore in respect of Inams claimed by charitable and religious institutions, no individual in entitled to maintain a claim and religious institution alone is entitled to have locus standi. Therefore, the order of the Revenue Divisional Officer, declaring the GPA holder of Mahanth as owner of the land U/s 9(2) of the Act, to say the least, is mischievous, perverse and totally illegal.

In view of the above facts, the Revenue Divisional Officer has no jurisdiction to exercise powers U/s 9 of A.P. (T.A.) Abolition of Inams Act, 1955 and declare a person as owner of inam lands, much less a person who has no locus standi at all. Further inam lands in question are being claimed by a religious institution and will be covered by appropriate provisions of the Act. The impugned Proceedings of Revenue Divisional Officer, Chevella in Case No.L/76/2000 dated 27-11-2004 wherein the respondent No.1 is declared as owner of the land in question U/s 9(2) of the A.P. (T.A.) Abolition of Inams Act, 1955 is perverse, without jurisdiction, abinitio void, and hereby declared as a nullity.

The land in question being inam lands vest with the State upon abolition of Inams as per the Section 3 of the Act. Further as the lands were converted to non-agricultural use as on the crucial date and continue to remain so as on date, proceedings need to be initiated before competent court, and not revenue authorities, under the appropriate provisions of the Act. As the lands are claimed by religious institution a claim under inam abolition Act can be maintained only in the name of the institution and not by individuals.

The appeal is accordingly disposed of.”

47. The scope of inquiry under the said Act was restricted to grant of occupancy rights which was negated for multiple reasons including the fact that the land was not under agriculture on the crucial date. Since the Inams Abolition Act is a special Act in respect of abolition of inams and conferment of occupancy rights, it is an order not by a

Tribunal having a plenary jurisdiction. The Tribunal under the Inams Abolition Act had limited jurisdiction to decide the questions arising under the Inams Abolition Act. Therefore, the findings recorded in such proceedings neither act as estoppel, nor res judicata for any other proceedings.

48. In ***Hope Plantations Ltd.***, it was held that estoppel works in the same proceedings, and also in subsequent suits between the same parties in which the same issue arises. Reliance has been placed upon the following part of the order, which reads thus:

> "26. .....These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises....."

49. The proceedings under the Inams Abolition Act were initiated by a Power of Attorney holder claiming occupancy rights on the basis of an agreement to sell. The Mutt was represented by a Power of Attorney holder who was claiming independent rights, therefore, the previous proceedings were not between the same parties as the Mutt was not a party in its own rights but through an attorney who was claiming independent right in himself. Therefore, the findings recorded therein are not relevant or binding in respect of proceedings under another statute, enacted for different objective

to protect the inam land given to the charitable and religious institutions.

50. The Inams Abolition Act is not applicable to the Mutt for the reason that the Act itself is not applicable to charitable and the religious institutions in terms of Section 1(2)(i) up to 26.12.1985 and thereafter in terms of first proviso to Section 4(1) of the Inams Abolition Act. Thus, any finding recorded by the Joint Collector is only for the purposes of negating the claim of Power of Attorney holder claiming occupancy rights. It has been categorically held by the Joint Collector that the Act is not applicable to the Mutt.

(b) Whether the land in question is agricultural land to which the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 is applicable and the lease in favor of the lessee stands cancelled in terms of Section 82(1) of the Act?

51. The primary argument of the learned counsel for the lessees is that there was no pleading that the land in question was agricultural land, therefore, the lessees were not made aware of the fact that the lease stands statutorily cancelled. The said argument is not tenable for the reason that the Inspector in his report dated 29.1.2008 and 16.12.2008 reported that the lands in question are agricultural lands and that lease of such lands stands cancelled. It was also mentioned that the validity of Section 82 has been upheld by this Court in ***Nallamilli Rami Reddi*** wherein this Court held as under:

> "12. It is plain that religious institutions fall into a separate class and lands held by them have a special character in respect of which tenancies had been created and these

> tenancies are sought to be put to an end to for resumption of lands for better management thereof. It is clear that the tenants under the religious institutions form a special class by themselves and such classification is made, so far as tenants are concerned, to achieve the object of protecting the interests of the religious institutions. Therefore, we do not think, any of the principles which result in hostile discrimination would be applicable to the present case."

52. The lessee had earlier filed Writ Petition No. 24440 of 2010 challenging the continuation of proceedings before the Endowments Tribunal. In the counter affidavit dated 7.12.2010 filed on behalf of the Mutt, it was stated that the leases have become null and void under Section 82 of the 1987 Act.

> "2. ...It is our case that the leases have been null and void under section 82 of Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 ..."

53. The writ petition was dismissed on 20.1.2011. The High Court also noticed the argument of the Mutt that in terms of Section 82, the leases stood cancelled.

> "The counsel would place reliance on Section 82 and contend that in any event the lease stood cancelled by virtue of sub-section (1) thereof, which provides that a lease of agricultural land held by other than a landless poor person on the date of commencement of the Act shall notwithstanding any other law for the time being in force stands cancelled."

54. The High Court had called for the record of the fourth respondent i.e., the Assistant Commissioner (Endowment) wherein, the following statement was made:

> "The lands and in question are agricultural lands. As per Section 82(1) any lease of the agriculture land belong into

> any institution are held by a person who is not a landless poor person stands cancelled. This Section is upheld by the Honourable Supreme Court."

55. The argument that the land is agricultural land was raised by the Mutt and also recorded in the report of the Inspector. Thus, it is noted that lessees were well aware of the nature of the land as agricultural land. Such order of the High Court has attained finality. The following point for consideration was culled down by the Endowments Tribunal:

> "(1) Whether the leases for 99 years covered respectively, by Ex.A1-3 in favour of R1 and by Ex.A4 in favour of R2, executed by the 2nd Applicant Math for the entire petition schedule property are not in subsistence by virtue of the provisions of the Endowments Act 30/87 (Sec.82 r/w. the rules made there under vide GOMS. Nos. 866 & 379 of 2003 with amendments to it in GOMS No. 160 of 2010)?"

56. The Mutt has based its arguments on the premise that the land in question is agricultural land. The precise argument raised by the lessee in the written arguments submitted before the Endowments Tribunal is as under:

> "14. The contention of the Applicant No. 2 Mutt is that the land covered by Ex.P1 to P4 are agricultural lands. It is submitted that the said contention is incorrect since the lands were taken by the Respondents for non-agricultural purpose and for industrial use. The Applicant No. 2 Mutt is aware of this fact. In page 2 of the legal notice dated 24.08.2007 (Ex.P11) issued by the Counsel for the Applicant No. 2 Mutt to Gulf Oil Corporation Ltd. (R3), it was stated that the lease agreements were permitted to be entered between my client Sri Udasin Mutt, Hussaini Alam, Hyderabad and M/s. Indian Detonators Limited/IDL Chemicals Limited. The above said companies were entitled to use the lands totally admeasuring an extent of Acs 539-38 guntas in terms of the lease agreement which was more the less to be used as safety,

> testing zone etc., as amended by the Government under the provisions of the Explosives Act and Rules. The Pahanies for the year 2003-2004 filed by the Applicant No. 2 Mutt vide Ex.P17 (A-D) say that the lands covered by Ex.P1 to P4 are "dry" lands. There is no mention in these documents to suggest that the said lands are "dry agricultural lands". The Khasra Pahani for the year 1954-55 filed by the Applicant No. 2 Mutt vide Ex.P20 say that the said lands are "Isuka Nela", which means sandy soil. It is common knowledge that on "sandy soil", it is not possible to do agriculture. Except these two documents, the Applicant No. 2 Mutt has not filed any other document(s) to establish that the lands covered by Ex.P1 to P4 are agricultural lands. On the other hand, the Respondents have filed Ex.R33 which is a letter written by Dy. Commissioner of Endowments to the Commissioner of Endowments. In the said letter, it was stated that "…the proposed land is neither cultivable nor useful for even grazing purpose, as it is covered by rocks…". Apart from Ex.R33, the order dated 25.08.2007 of the Joint Collector, R.R. District has stated that "…the land in question is used for non-agricultural purpose…It is, therefore, submitted that the lands covered by Ex.P1 to P4 are non-agricultural lands right from the commencement of the lease and therefore, the contention of the Applicant No. 2 that the lands are agricultural lands is devoid of merit."

57. A perusal of the written arguments, as reproduced above, shows that the lessees have submitted that the land is being used for non-agricultural purposes. The entire argument is based upon use of the land for non-agricultural purposes. The nature of land is distinct from the use of the land. Since the land is agricultural land, its use for non-agricultural purposes would not alter the nature of the land as an agricultural land. Section 82 of the 1987 Act mentions "any lease of agricultural land….", therefore, the lease has to be of agricultural land irrespective of the use to which the lessee may put such agricultural land to. The language of the statute refers to nature of the land and not the use thereof. Therefore, even in terms

of the written arguments raised by the lessee before the Tribunal, the use of land for non-agricultural purposes would be irrelevant for statutory cancellation of the lease of agricultural lands under Section 82 of the 1987 Act.

58. The distinction between agricultural and non-agricultural land sought to be drawn from the reading of Section 3 of the Andhra Pradesh Non-Agricultural Assessments Act, 1963 repealed by the A.P Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006, is not tenable. The distinction between the categories of land leads to consequence of higher assessment in the case of non-agricultural land. The lessee has not led any evidence that they are paying levy as per the rates fixed under this statute as that of non-agricultural land.

59. A learned Single Judge of the Andhra Pradesh High Court in a judgment reported as ***A.P. Punjabi Sabha, Hyderabad*** v. ***Joint Collector, Hyderabad***[25] while considering the provisions of Inams Abolition Act held that for the purpose of this Act, if the land is put to non-agricultural purposes, it is not covered by the Act in question. The Collector would assume jurisdiction to decide the claims under Section 10 only if the lands were put to agricultural use. It was held as under:

> "19. The term 'agricultural or non-agricultural purposes' is not defined under the Act. However, for the purpose of Section 9, it is sufficient if the land is put to non-agricultural purposes. The reason or justification is outside the scope of enquiry under the provisions of the Act. The Collector will assume jurisdiction to decide the claims under Section 10 only, if the

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> lands were put to agricultural use. Though in Form I, the relevant date is mentioned as 20.7.1955, in view of subsequent legislative changes and judicial pronouncements, the crucial date now stands as 1.11.1973. In Sections 4 and 5, the expression 'cultivates personally' is used, whereas in Sections 6, 7 and 8, the expression 'under his personal cultivation' is employed. They constitute the jurisdictional facts, for exercise of power under Section 10. An inamdar, Kazim-e-kadim or tenant may have an excellent ground or justification, for not undertaking activities of cultivation in the inam lands. But once such land is found to be not under cultivation, the Collector ceases to have power to deal with the same under Section 10. Further, the contesting respondents clearly stated that the land is put to non-agricultural purposes."

60. On the other hand, in respect of the 1987 Act, the Division Bench of the High Court in ***Siddhartha Academy*** held that use of land for non-agricultural purpose is immaterial for the purpose of statutory cancellation of lease deed, as provided under Section 82(1) of the said Act. It was held as under:

> "A reading of the above provision would show that the essential object and purpose of the provision is with regard to regulating the leases of agricultural lands and all such leases except those held by landless poor persons stand cancelled. Explanation I also defines the expression 'landless poor person'. For applying Section 82, the test therefore is whether the lease is that of agricultural lands. On the facts of the present case, it cannot be disputed that the lease in favour of the appellant is that of agricultural land. The mere fact that the appellant/lessee has put the said land for non-agricultural use therefore does not make any difference as the purpose for which the leased property is used is immaterial for the purpose of Section 82 of the Act. The leases therefore statutorily stand cancelled with regard to all agricultural lands and are only saved to the extent of leases in favour of landless poor persons. The learned Single Judge therefore has rightly held against the writ petitioner and the orders of eviction passed against them by applying Section 82(1) of the Act requires no interference."

61. The SLP (Civil) Nos. 25617-25619 of 2013 stood withdrawn on

27.2.2017. Thus, the order passed by the Division Bench had attained finality.

(c) Whether the parties went to trial with the knowledge that the land in question was agricultural land in the proceedings between the parties before the Endowments Tribunal?

62. The judgments in ***Bachhaj Nahar*** and ***Ram Sarup Gupta*** are not applicable to the facts of the present case wherein, it has been held that it is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet.

63. The judgments relied upon by Shri Salve such as ***Ibrahim Uddin,*** and ***Biraji alias Brijraji*** are not helpful to the arguments raised. In fact, the lessees were aware of the controversy in respect of nature of land and its statutory cancellation, therefore, the lack of pleadings or the evidence loses its significance. The 1987 Act is a Code in itself providing for constitution of the Endowments Tribunal, appeal, revision and review. The strict rule of procedure contemplated by the Code of Civil Procedure, 1908 in respect of pleadings and evidence cannot be extended to the Tribunal constituted for specific purpose. Since the lessees were aware of the fact that the Mutt claims the land to be agricultural land and

statutory cancellation of the lease was being averred for the reason that the leased land was agricultural, therefore, the lessees cannot complain of any violation of principles of natural justice or strict rules of pleading as is required under the Code of Civil Procedure, 1908.

64. In fact, this Court in ***Nedunuri Kameswaramma*** held that since parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case. It was held as under:

> "5. No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion. Neither party claimed before us that it had any further evidence to offer."

65. *In* ***Swamy Atmananda,*** it was held that if the parties went to the trial knowing fully well the real issues involved and adduced evidence in such a case, without establishing prejudice, it would not be open to a party to raise the question of non-framing of a particular issue.

66. Therefore, the parties were aware of the controversy about the nature of the land. Thus, the lessee cannot be permitted to turn

around to dispute the nature of land leased to them.

67. We find merit in the argument raised by the lessees that the lease executed prior to the commencement of 1987 Act would not be annulled for the reason that there was no prior approval. The leases were granted prior to the commencement of the 1987 Act but even under the 1966 Act, Section 70 prohibited lease of the inam land if its term exceeded six years. The lease of land measuring 143 acres vide lease deed dated 23.7.1964; 257 acres 19 guntas vide lease deed dated 14.9.1966 and 2 acres 32 guntas vide lease deed dated 21.3.1969 were not preceded with any prior approval of the competent authority. Reliance is placed upon the note dated 24.2.1964 but such note is part of the decision-making process as no approval was communicated to either the lessee or the lessor or to any person. In fact, the said communication is a note of Second Secretary to Government Home (Endowments-III) Department that lease for a term of 99 years cannot be construed as a transfer of ownership of the endowed lands by outright sale and is prohibited under Rule 331 of Hyderabad State Endowment Rules and Regulations. It is not a communication addressed either to the lessee or to the lessor or to any other person or institution. The regulation 331 prohibits the possession over and transfer of the nuzli lands (tax bearing lands) from generation to generation in future. The Regulation 331 is as follows:

> "331. In the light of experience regarding the possession over and transfer of the nuzli lands (tax bearing lands) from generation to generation in future endowed lands will not be let out on nuzul so that endowments may be

safeguarded."

68. The note dated 24.02.1964 relied upon to argue that it leads to approval of lease is not a decision which can be said to be effective and binding in view of the judgements of this Court. Recently, this Court in ***Nareshbhai Bhagubhai*** v. ***Union of India***[26], held as under:

> "27. In *Bachhittar Singh* v. *State of Punjab* [*Bachhittar Singh* v. *State of Punjab*, AIR 1963 SC 395] a Constitution Bench held that merely writing something on the file does not amount to an order. For a file noting to amount to a decision of the Government, it must be communicated to the person so affected, before that person can be bound by that order. Until the order is communicated to the person affected by it, it cannot be regarded as anything more than being provisional in character.
>
> 28. Similarly, in *Shanti Sports Club* v. *Union of India* [*Shanti Sports Club* v. *Union of India*, (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707] this Court held that notings recorded in the official files, by the officers of the Government at different levels, and even the Ministers, do not become a decision of the Government, unless the same are sanctified and acted upon, by issuing an order in the name of the President or Governor, as the case may be, and are communicated to the affected persons.
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> 29. In *Sethi Auto Service Station* v. *DDA* [*Sethi Auto Service Station* v. *DDA*, (2009) 1 SCC 180] , this Court held that: (SCC pp. 185-86, paras 14 & 16)
>
> > "*14*. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. *Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the*

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> *final decision-making authority in the department, gets his approval and the final order is [Ed.: The word between two asterisks has been emphasised in original as well.] communicated [Ed.: The word between two asterisks has been emphasised in original as well.] to the person concerned*.
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> ***
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> *16. To the like effect are the observations of this Court in Laxminarayan R. Bhattad* v. *State of Maharashtra* [*Laxminarayan R. Bhattad* v. *State of Maharashtra*, (2003) 5 SCC 413] , *wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right*."

69. The only approval of land measuring 173 acres and 19 guntas is dated 10.5.1976. Though there is a reference to the communication of the Commissioner Endowment dated 29.4.1975 in respect of three previous lease deeds, but there is no communication to the Mutt either of the letter dated 10.5.1976 or of 29.4.1975. Section 82 does not make any exception of the lease granted with approval. The approval is mentioned only in Section 75 of the 1987 Act. Even if such approval is treated to have been granted in respect of the entire land, the lease granted with approval is relevant only for the purposes of Section 75 of the 1987 Act and not for the purposes of Section 82 of the said Act.

70. Similarly, the argument that the land now falls within the urban agglomeration in view of the enactment of the Urban Land (Ceiling and Regulation) Act, 1976 is again not tenable. Firstly, the said Act stands repealed on 22.3.1999. Still further, the mere fact that the land has come within the municipal limits would not make the land

as non-agricultural land. It only means that the land within the municipal limits can be utilized or the buildings be constructed in terms of the provisions of the Municipal Laws applicable thereto.

71. Similarly, the argument that the land in question falls with the Zonal Development Plan for Kukatpally as per the communication of the Hyderabad Urban Development Authority is again not tenable. The Zonal Development Plan is future planning of the development of the area. Thus, in future, the land can be used only according to Zonal Development Plan but that does not mean that the agricultural nature of the land has ceased to exist. Therefore, the said communication is also not tenable.

72. In Civil Appeal No. 7761 of 2014, there is a direction to consider the request of the lessee. However, Rule 15 of the Telangana Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Rights (Other than Agricultural Land) Leases and Licenses Rules, 2003 will have no application to the agricultural land in view of the fact that Section 82(3) and (4) is applicable only to the land and property which is not agricultural. Since the land has been found to be agricultural, therefore, 2003 Rules would not be applicable to the land in question. Thus, the direction to consider the request of the lessee to consider the grant of lease under Rule 15 is untenable.

73. Consequently, Civil Appeal Nos. 7759-7760 of 2014 are dismissed whereas Civil Appeal No. 7761 of 2014 is allowed, setting aside the direction to consider the request of the lessee under Rule 15 of the

Telangana Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Rights (Other than Agricultural Land) Leases and Licenses Rules, 2003.

.....J.
(HEMANT GUPTA)

.....J.
(VIKRAM NATH)

NEW DELHI;
SEPTEMBER 13, 2022.