Konda Lakshmana Bapuji vs Govt. Of Andhra Pradesh & Ors on 29 January, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1012, 2002 AIR SCW 730, 2002 (1) SLT 590, 2002 (3) SRJ 94, (2002) 2 JT 253 (SC), 2002 (1) SCALE 584, 2002 (1) LRI 289, 2002 (3) SCC 258, (2002) 3 MAHLR 303, (2002) 1 SCJ 508, (2002) 2 ANDHLD 56, (2002) 1 SUPREME 551, (2002) 1 SCALE 584

Bench: Syed Shah Mohammed Quadri, S.N. Phukan

CASE NO.:
Appeal (civil) 2063 of 1999

PETITIONER:
KONDA LAKSHMANA BAPUJI

Vs.

RESPONDENT:
GOVT. OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT: 29/01/2002

BENCH:
Syed Shah Mohammed Quadri & S.N. Phukan

JUDGMENT:

SYED SHAH MOHAMMED QUADRI, J.

This appeal, by special leave, is from the judgment of the Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad dated October 27, 1998 dismissing Writ Petition No.5332 of 1993, filed by the appellant assailing the order of the Special Court under A.P.Land Grabbing (Prohibition) Act, 1982 (for short, 'the Act') in L.G.C.No.61 of 1990 dated April 16, 1993. The Special Court had upheld the claim of the first respondent (the State of Andhra Pradesh represented by its Chief Secretary) that the appellant was a land grabber of land of an extent of 2 acres 06 guntas, comprised in Survey Nos.9/15 Paiki, 9/16, and 9/17 of Khairathabad Village, Golconda Mandal, Hyderabad District (for short, 'the land in dispute') and directed the appellant to restore possession of that land to the first respondent in terms of the decree. To comprehend the controversy in the appeal it would be appropriate to set out the relevant facts. The appellant traces his title to the land in dispute under an unregistered agreement for perpetual lease executed by one of the successors of

the Inamdar, Mohd. Noorudin Asrari, in respect of the Inam land in Survey Nos.9/15, 9/16, 9/17 and 9/18, on November 28, 1954 (Ex.B-39). Later the said Asrari executed a registered perpetual lease deed in favour of the appellant on December 11, 1957 (a certified copy is marked as Ex.B-40). Soon thereafter one Rasheed Shahpurji Chenoy had set up a rival claim to the land in dispute by filing Original Suit No.13 of 1958, in the Court of the Additional Chief Judge, City Civil Court, Hyderabad, against the first respondent, the appellant and others praying for declaration of title to and recovery of possession of the said land. In that suit the learned Additional Chief Judge passed an interim order directing the parties to maintain status quo in regard to the land in dispute. However, the appellant having sought permission of the court, constructed a building "Jala Drushyam" on the land in dispute on his giving an undertaking that in the event of the plaintiff therein succeeding in the suit, the building would be vacated by him, leaving the structures intact, without claiming any compensation. On November 11, 1975 the said suit of Rasheed Shahpurji Chenoy was dismissed recording the finding that he did not have any title to the suit land which was the Government land (Ex.A-1).

It appears that as a follow up action of the minutes of the committee held in the chamber of the Chief Secretary to the Government of Andhra Pradesh, the Deputy Secretary, G.A.D. (O.P.LLL) by his letter dated September 14, 1959 (Ex.B-35) asked the Collector, inter alia, to declare the land situated between the Secretariat and the Fisheries Department (which includes the land in dispute) as the Government land. Thereafter on October 5, 1959, the Collector passed order declaring Survey No.9/15 paiki, 9/16, 9/17, 9/18 and 9/19 admeasuring 19 acres 29 guntas as Government Land and informed the Chief Secretary accordingly on October 20, 1959 (Ex.A-14 and Ex.B-34).

On February 28, 1976, the Tehsildar, Hyderabad, Urban Taluk, noticing that the appellant was in unauthorised occupation of Government land, issued eviction notice calling upon him to vacate the land comprised in Survey No.9/15 paiki, 9/16 & 9/17 admeasuring 2 acres 28 guntas (Ex.B-38). Pursuant to the said notice, an order of eviction was passed against the appellant on May 28, 1977 (Ex.B-58). That order was challenged by the appellant in Writ Petition No.1414 of 1977 in the High Court of Judicature, Andhra Pradesh at Hyderabad. A learned single Judge of the High Court allowed the writ petition on January 20, 1978 (Ex.A-3). Questioning that order the first respondent filed W.A.No.61 of 1978 before the Division Bench. It would be relevant to note here that the Act came into force on September 6, 1982 but that fact was not brought to the notice of the Division Bench at the hearing of the Writ Appeal. The Division Bench opined that there was bona fide dispute of title to the land in dispute between the appellant and the Government which must be adjudicated upon by the ordinary court of law and that the Government could not decide unilaterally in its own favour and resort to summary eviction proceedings under the Andhra Pradesh Land Encroachment Act, 1905 (for short, 'the Land Encroachment Act') and dismissed the Writ Appeal on November 14, 1983 (Ex.A-4). The appellant again filed Writ Petition 15724 of 1984 apprehending his dispossession from the land in dispute. On June 16, 1986, a learned Single Judge of the High Court disposed of the Writ Petition taking note of the observations of the Division Bench in the said Writ Appeal and the fact that the first respondent had filed, O.S. No1497 of 1985 in the Court of the IV Additional Judge, City Civil Court, Hyderabad for declaration of title and recovery of possession of land in dispute on November 25, 1985.

In view of the provisions of sub-section (8) of Section 8 of the Act, the said suit of the first respondent was transferred to the Special Court from the Court of the IV Additional Judge. Though the order of the transfer of the suit was challenged by the appellant in the High Court by filing civil revision petition, it was later dismissed as not pressed. Be that as it may, the first respondent filed an application invoking jurisdiction of Special Court for taking cognizance of the case and prayed that the plaint in the said suit be read as part of the application. Thereupon, the Special Court issued notification for consideration of objections under the first proviso to sub- section (6) of Section 8 of the Act in the Andhra Pradesh Gazette on April 1, 1992. The Special Court, after considering the objections filed by the appellant taking cognizance of the case, LGC No.61 of 1990 (referred to in this judgment as 'the case'), tried the case as a civil suit. The parties were given opportunity to lead evidence both oral and documentary. The first respondent examined P.W.1 and marked Exs.A-1 to A-48; the appellant examined himself as R.W.1 and marked Exs. B-1 to B-65. By consent of the parties Exs.X-1 to X-4 (copies of various plans) were also marked. After considering the evidence adduced by both the sides the Special Court decreed the case of the first respondent on April 16, 1993 which was upheld by the Division Bench of the High Court in the said W.P.No.5332 of 1993 (filed by the appellant) by its judgment and order dated October 27, 1998 which is under challenge in this appeal.

Three main contentions were elaborated by Mr.K. Parasaran, the learned senior counsel appearing for the appellant. His first contention is that the appellant could not be held to be a land grabber as his possession was alleged to be permissive by the first respondent and he was found to have prima facie bona fide claim to the property in dispute by the High Court in Writ Petition No.1414 of 1977 and Writ Appeal No.61 of 1978. The second contention is that the Special Court had no jurisdiction to try the case and the third contention is that, in any event, the appellant had perfected his title to the land in dispute by adverse possession.

Mr.Altaf Ahmad, the learned Additional Solicitor General, appearing for the first respondent, has argued that the questions whether the appellant is a land grabber and whether he has title to the land in dispute or it is a government land, were decided by the Special Court after trial and the appellant had ample opportunity to establish his case; the appellant challenged the order of the transfer of the suit from the Civil Court to the Special Court in the High Court by filing a civil revision petition; he, however, did not press it. After the said questions were found against him by the Special Court, submitted Mr.Ahmad, the appellant could not be permitted to challenge the jurisdiction of the Special Court and they, being the findings of fact, are not open to challenge in appeal filed under Article 136 of the Constitution.

These contentions can conveniently be dealt with together.

On the contentions, urged before us, we find that the Special Court framed Issue Nos.3, 5 and 6 which are as follows:

> "(3) Whether this Court has jurisdiction to entertain the suit as it raises bona fide dispute of title?

(5) Whether the respondent perfected title by adverse possession?

(6) Whether the respondent is a land grabber within the meaning of the Act?"

It was held, on those issues, that the Special Court had jurisdiction to try the case; the appellant did not prescribe title by adverse possession and that the appellant was a land grabber. The findings recorded by the Special Court were approved by the High Court in the writ petition filed by the appellant. The correctness of those findings are assailed in this appeal. Before proceeding further, it is appropriate to determine the question of jurisdiction of the Special Court. On this question, it is noted above, Issue No.3 was framed and the Special Court held that it had jurisdiction. The High Court after adverting to the relevant provisions of the Act, concluded :

> "We find, therefore, in the totality of the situation and in view of the specific provisions as laid down by the Act, the Special Court was within its jurisdiction to deal with the matter and to go into the case as to whether there is any title involved in favour of the writ petitioner. Incidentally, be it noted that the statute itself has equated the Special Court with that of a Civil Court with all the powers of the Civil Court. Elaborate and detailed enquiry has been conducted by way of a regular trial like any other civil suit, and like any other civil suit, evidence has been recorded and considered and the Special Court came to a definite finding. Does it warrant intervention of the writ court on the basis of the above? The answer cannot but be in the negative."

Having regard to the principles laid down by a Constitution Bench of this Court in Dhulabhai & Ors. Vs. The State of Madhya Pradesh & Anr. [1968 (3) SCR 662], it will be apt to advert to the scheme and the provisions of the Act having a bearing on the question of jurisdiction of the Special Court and Special Tribunal.

Section 17B of the Act provides that the schedule to the Act shall constitute the guidelines for the interpretation and implementation of the Act. We have perused the Schedule to the Act containing the Statement of Objects and Reasons to the Andhra Pradesh Land Grabbing (Prohibition) Bill of 1982 as well as the Bill of 1987. The point that is sought to be made out in the Schedule is that having regard to the increasing trend in grabbing the lands of the Government, local authorities, wakfs, charitable and religious endowments, evacuees and private persons by unscrupulous and resourceful persons forming a distinct class of economic offenders backed by wealth without any semblance of right and having taken note of the delays in disposal of civil and criminal cases in the regular courts, the State Legislature felt that unless all such cases of land grabbing are immediately detected and dealt sternly and swiftly by specially devised adjudicating forums the evil cannot subside and social injustice will continue to be perpetrated with impunity. The Act constituted a Special Court, having both the civil and criminal jurisdiction, which consists of a serving or retired Judge of a High Court (Chairman), a serving or retired District Judge and a serving or retired Civil Servant not below the rank of a District Collector (as members) to entertain the cases in which the magnitude of the evil needs immediate eradication so as to avoid duplication and to further the cause of justice. The Court of the District Judge having jurisdiction over the area including Chief

Judge, City Civil Court, Hyderabad, is constituted as a Special Tribunal to try cases of which cognizance was not taken by the Special Court in regard to any alleged act of land grabbing or with respect to ownership and title to or lawful possession of the land grabbed on or after the commencement of the Act. Against any judgment or order of the Special Tribunal (not being interlocutory order) an appeal is provided to the Special Court on questions of both law and fact. The Special Tribunal has only civil jurisdiction and the Code of Civil Procedure is applicable to the proceedings before it whereas the Special Court has both the civil as well as the criminal jurisdiction to which the provisions of Codes of Civil Procedure and Criminal Procedure apply. Both the Special Court as well as the Special Tribunals have power to reject any case brought before them if it is prima facie frivolous or vexatious. It is provided that any case pending before any court or other authority immediately before the commencement of the Act as would have been within the jurisdiction of the Special Tribunal/Special Court, shall stand transferred to the Special Tribunal/Special Court, as the case may be, as if the cause of action on which such suit or proceeding is based, had arisen after such commencement. If the Special Court is of the opinion that any case brought before it is not a fit case to be taken cognizance of, it may return the same for presentation before the Special Tribunal. There is, however, no provision that the case should be transferred back to the Civil Court if the final determination by the Special Tribunal or by the Special Court results in recording a finding that the occupation of the land by the respondent does not amount to land grabbing. This is because statutorily the Special Court is a Civil Court having both original and appellate jurisdiction as well as a Court of Session for all practical purposes and the District Judge having jurisdiction over the area in which land is alleged to be grabbed is constituted as a Special Tribunal.

It is apt to refer to the relevant provisions of the Act. Section 2 contains definition of various terms and expressions used in the Act. Section 3 of the Act which declares that land grabbing in any form is unlawful and any activity connected with or arising out of land grabbing shall be an offence punishable under the Act cannot be lost sight of. Section 4 of the Act ordains that no person shall commit or cause to be committed land grabbing. It further declares that any person who, on or after the commencement of this Act, continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment including a wakf, or other private person, shall be guilty of an offence under the Act and on conviction the offence is punishable with imprisonment for a term which shall not be less than six months but which may extend to five years, and with fine which may extend to five thousand rupees. Likewise Section 5 of the Act provides penalty for other offences in connection with land grabbing. Offences by companies fall within the ambit of the Act as provided in Section 6 of the Act.

It will be useful to read Sections 7 to 10 of the Act which deal with the Special Court insofar as they are relevant for the present discussion. They are as under :

> "7. Constitution of Special Courts : -
>
> (1) The Government may, for the purpose of providing speedy enquiry into any alleged act of land grabbing, and trial of cases in respect of the ownership and title to, or lawful possession of, the land grabbed, by notification, constitute a Special Court.

(2) to (5C) *** *** *** (5D)(i) Notwithstanding anything in the Code of Civil Procedure, 1908 (V of 1908) the Special Court may follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play and subject to the other provisions of this Act and of any rules made thereunder while deciding the Civil liability.

(5D)(ii) to (6) *** *** ***

8. Procedure and powers of the Special Courts :

(1) The Special Court may, either suo motu or on application made by any person, officer or authority take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit;

(1-A) The Special Court shall, for the purpose of taking cognizance of the case, consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved or in the interest of justice required or any other relevant matter :

Provided that the Special Court shall not take congnizance of any such case without hearing the petitioner.

(2) Notwithstanding anything in the Code of Civil Procedure, 1908 the Code of Criminal Procedure, 1973 or in the Andhra Pradesh Civil Courts Act, 1972, any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land grabbed under this Act, shall be triable only in a Special Court constituted for the area in which the land grabbed is situated; and the decision of the Special Court shall be final.

(2-A) If the Special Court is of the opinion that any case brought before it, is not a fit case to be taken congnizance of, it may return the same for presentation before the Special Tribunal :

Provided that if, in the opinion of the Special Court, any application filed before it is prima facie frivolous or vexatious, it shall reject the same without any further enquiry :

Provided further that if on an application from an interested person to withdraw and try a case pending before any Special Tribunal the Special Court is of the opinion that it is a fit case to be withdrawn and tried by it, it may for reasons to be recorded in writing withdraw any such case from such Special Tribunal and shall deal with it as if the case was originally instituted before the Special Court.

(2-B) Notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act.

(2-C) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed. The evidence admitted during the criminal proceeding may be made use of while trying the civil liability. But additional evidence, if any, adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability. Any person accused of land grabbing or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence or oath in disproof of the charge made against him or any person charged together with his in the criminal proceeding :

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any of the parties or the Special Court or give rise to any presumption against himself or any person charged together with him at the same proceeding.

(3) to (5) *** *** *** (6) Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land.

Provided that the Special Court shall, by notification, specify the fact of taking cognizance of the case under this Act. Such notification, shall state that any objection which may be received by the Special Court from any person including the custodian of evacuee property within the period specified therein will be considered by it;

Provided further that where the custodian of evacuee property objects to the Special Court taking cognizance of the case, the Special Court shall not proceed further with the case in regard to such property;

Provided also that the Special Court shall cause a notice of taking cognizance of the case under the Act, served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land.

(7) *** *** *** (8) Any case, pending before any Court or other authority immediately before the Constitution of a Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court as if the cause of action on which such suit or proceeding is based had arisen after the constitution of the Special Court."

9. Special Court to have the powers of the Civil Court and the Court of Session :-

> Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, the Andhra Pradesh Civil Courts Act, 1972 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of session and shall have all the powers of a Civil Court and a Court of session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

"10.Burden of proof -- Where in any proceedings under this Act, a land is alleged to have been grabbed, and such land is prima facie proved to be the land owned by the Government or by a private person the Special Court or as the case may be, the Special Tribunal shall presume that the person who is alleged to have grabbed the land is a land grabber and the burden of proving that the land has not been grabbed by him shall be on such person."

Section 7 of the Act envisages constitution of Special Courts. Sub-section (1) of Section 7 enables the Government to constitute a Special Court for the purpose of providing speedy enquiry into any alleged act of land grabbing and trial of cases in respect of the ownership and title to, or lawful possession of the land "grabbed" which in the context includes "alleged to have been grabbed". Clause (i) of sub-section (5D) enables the Special Court to follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play subject, of course, to the other provisions of the Act and the Rules made thereunder while deciding the civil liability. Clause (ii) of sub-section (5D) of Section 7 provides that notwithstanding anything contained in Section 260 or Section 262 of the Code of Criminal Procedure, 1973 every offence, punishable under this Act, shall be tried in a summary way and the provisions of Sections 263 to 265 (both inclusive) of the said Code, shall apply to such trial. Section 8 of the Act specifies the procedure and powers of the Special Court. Sub- section (1) of Section 8 authorises a Special Court to take cognizance of and try every case arising out of any alleged act of land grabbing either suo motu or on application made by any person, officer or authority. It has also the power to try every case with respect to the ownership and title to, or lawful possession of the land alleged to have been grabbed whether before or after the commencement of the Act and pass such orders including interim orders as it deems fit.

It is pertinent to note that mere allegation of an act of land grabbing is sufficient to invoke the jurisdiction of the Special Court. In both Section 7(1) and Section 8(1) of the Act the phrase 'any alleged act of land grabbing' is employed and not 'act of land grabbing'. It appears to us that it is designedly done by the legislature to obviate the difficulty of duplication of trial once in the courts under the Act and over again in the ordinary Civil Court. The purpose of the Act is to identify cases involving allegation of land grabbing for speedy enquiry and trial. The courts under the Act are nonetheless Civil Courts which follow Code of Civil Procedure and are competent to grant the same reliefs which can be obtained from ordinary Civil Courts. For the purpose of taking cognizance of the case the Special Court is required to consider the location or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved or in the interest of justice required and to give an opportunity of being heard to the petitioner (sub-section (1-A). It is plain that sub-section (2) opens with a non obstante clause and mandates that notwithstanding anything

in the Code of Civil Procedure, the Code of Criminal Procedure, or in the Andhra Pradesh Civil Courts Act, 1972, any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land alleged to have been grabbed under the Act, shall be triable only in a Special Court constituted for the area in which the land grabbed is situated and the decision of the Special Court shall be final. Sub-section (2B) specifically provides that notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act. It is left to the Special Court to determine the order in which the civil and criminal liability against a land grabber be initiated. Sub-section (6) provides that every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of the land grabbing and of the persons who committed such land grabbing and every judgment of the Special Court with regard to determination of title and ownership to, or lawful possession of, any land alleged to have been grabbed, shall be binding on all persons having interest in such land. It contains three provisos but they are not relevant for the present discussion. Sub-section (8) brings about automatic transfer of any case pending before any court or authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of the Special Court if the cause of action on which such suit or proceeding is based, has arisen after the constitution of the Special Court. The provisions of sub-section (2) of Section 8 which commences with a non obstante clause confer jurisdiction on the Special Court and Section 15 of the Act directs that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a court or any other tribunal or authority. A combined reading of these provisions leads to the conclusion that the jurisdiction of Civil Court under Section 9 of the Code of Civil Procedure and under the Civil Courts Act is ousted and the Act which is special law will prevail and as such the Special Court will have jurisdiction in respect of the matters dealt with thereunder. [See : Sanwarmal Kejriwal vs. Vishwa Cooperative Housing Society Ltd. & Ors. [1990 (2) SCC 288]. Section 9 provides, inter alia, that except as expressly provided in this Act, the provisions of the Code of Criminal Procedure, insofar as they are not inconsistent with the provisions of the Act, shall apply to the proceedings before the Special Court and for purposes of the said Code, the Special Court shall be deemed to be a Court of Session and shall have all the powers of Court of Session.

The discussion of the above provisions would be incomplete without taking note of Section 10 of the Act which is a procedural provision and deals with burden of proof. A plain reading of this section would indicate that in any proceedings under this Act - (i) where a land is alleged to have been grabbed; and (ii) such land is prima facie proved to be the land owned by the Government or by a private person, the Special Court/Special Tribunal shall presume that the person who is alleged to have grabbed the land is a land grabber. When the presumption under Section 10 is drawn by the Special Court/Special Tribunal, the burden of proving that the land has not been grabbed by him is cast on the alleged land grabber. In view of the meaning of the words "shall presume"

> in Section 4 of the Indian Evidence Act, the effect of raising presumption under Section 10 of the Act would be that unless the alleged land grabber disproves that the land has been grabbed by him, the Special Court/Special Tribunal shall regard that the land in question has been grabbed by the alleged land grabber.

It has been noticed above that O.S.No.1497 of 1985 filed by the first respondent in the Court of the IV Additional Judge, City Civil Court, Hyderabad, was transferred to the Special Court in view of the provisions of sub-section (8) of Section 8 of the Act. The order transferring the case from the Civil Court to the Special Court was assailed by the appellant in the High Court in a civil revision petition which was later dismissed as not pressed. Irrespective of the answer to the question whether the order of transfer of the said suit from the Civil Court to the Special Court operates as issue estoppel or not, it is plain that the validity of the order of transfer of the suit from the Civil Court to the Special Court was not urged before the High Court in the writ petition (filed to challenge the judgment of the Special Court), out of which this appeal arises, so the transfer of the suit cannot be allowed to be challenged in this appeal. Be that as it may, the following facts disclose that de hors the transfer of the suit, the jurisdiction of the Special Court was invoked by the first respondent under the Act.

The first respondent filed petition under sub-section (1) of the Section 7 read with sub-section (1) of Section 8 of the Act before the Special Court on March 20, 1992 complaining of the alleged act of land grabbing and praying the Court to declare the appellant as a land grabber and the structures raised thereon by him as unauthorised and to order his eviction from the land grabbed and deliver possession of the same. The Special Court issued notification under Rule 7(1) of the Land Grabbing Rules, which was published in the A.P.Gazette on April 1, 1992 which reads as follows :

NOTIFICATION BY HEADS OF DEPARTMENTS ETC. JUDICIAL NOTIFICATIONS LAND GRABBING CASES FORM-II (A) See Rule 7(1) NOTICE In the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, 3, R.K.R.Govt. Offices Complex; II Floor 'B' Block Tank Bund Road; Hyderabad.

L.G.C.No.61/90 -- The Special Court has taken cognizance of the case filed by The State of Andhra Pradesh represented by the Collector, Hyderabad District, Hyderabad. It is alleged that the land belonging to Government as specified in the schedule below is grabbed by Sri Konda Laxman Bapuji, son of Bapuji, H.No.6-1-2/1, Khairatabad, near Tank Bund, Hyderabad.

The Schedule Name of the owner of the land - Government Village in which it is located - Khairatabad village. Mandal District in which it falls - Golconda taluq, Hyderabad District.

Sl.No.Sub-Division No. of the alleged land- 9/15 Paiki, 9/16 and 9/17.

Extent of land - 2.06 Ac.Gunts.

Boundaries of the land :

North : Sy.No.9/1, Hussainsagar Tank South : Sy. No.37, Fisheries Department Building and Road.

East : Land of smt.Laxmi Gunti.

West : Open Land of Sy.Nos.9/16 part and 9/18 part.

Notice is hereby given to whomsoever it may concern including the custodian of evacuee property concerned as required under the first proviso to sub- section (6) of section 8 of the Andhra Pradesh Land Grabbing (Prohibition) act, 1982 (A.P.Act 12 of 1982). If any person intends to object, he may submit his objections, if any, before the Special Court on or before the 15th day of April, 1992 for its consideration.

If no objections are received by the Special Court within the stipulated time it will be presumed that there are no objections for proceeding further and the case will be proceeded accordingly.

P.V.Raman Rao, Registrar Special Court A.P.Land Grabbing (Prohibition) Act Hyderabad."

In response to the said notice the appellant filed his objections on April 10, 1992. He denied the allegation of land grabbing but did not object to the jurisdiction of the Special Court. After considering the objections, filed by the appellant, to the Special Court taking cognizance of the case numbered as L.G.C.No.61/90, the case was decided on the evidence adduced by the parties before the Special Court.

In this context the following submission, pressed by Mr.Parasaran, may be considered here. He argued that the High Court in the Writ Petition filed by the appellant challenging the validity of the notice of eviction under the Land Encroachment Act, gave liberty to the first respondent to establish its title in Civil Court, which was also confirmed by the Division Bench in the writ appeal filed by the first respondent; although before the date of the disposal of the writ appeal the Act had come into force on September 6, 1982, the first respondent did not seek liberty from the court to approach the Special Court, therefore, on the principle of "might and ought" he was barred from approaching the Special Court and the proceeding before the Special Court was barred by the principle of res judicata. Section 11 of the Code of Civil Procedure incorporates the principle of res judicata which, in short, means a matter which has already been adjudged judicially between the same parties. In substance, Section 11 bars a court from trying any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties in a court and has been heard and finally decided by such court which is competent to try such subsequent suit or the suit in which such issue has been subsequently raised. Eight Explanations are appended to it. We are concerned with Explanation IV which embodies the principle of constructive res judicata and says that any matter which "might and ought"

> to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. A conjoint reading of Section 11 and Explanation IV shows that if a plea which might and ought to have been taken in the earlier suit, shall be deemed to have been taken and decided against the person raising the plea in the subsequent suit.
>
> Mr.Parasaran relied upon the judgment of the Privy Council in Sha Shivraj Gopalji vs. Edappakath Ayissa Bi & Ors. [AIR 1949 PC 302]. In that case, the appellant filed second execution petition and sought to attach the right, title and interest of the respondent in the properties on the basis of the Mappilla Marumakkattyam Act, 1938 (Act of 1938). A Division Bench of the High Court of Madras referred to the contention urged in subsequent proceedings at the stage of appeal that the assignee-decree-holder could proceed against the tavazhi properties under the said Act was not dealt with on merits in those proceedings and held that that was a point which the appellant could have raised in his petition in the earlier proceedings and he failed to do so and therefore the dismissal of the earlier execution petition filed in 1940 operated as res judicata in the subsequent case. While approving the said conclusion of the High Court, the Privy Council observed, "Apart from the provisions of Section 11, Civil P.C. it would be contrary to principle (see Ram Kirpal Shukul vs. Rup Kuari, [11 I.A.37 : (6 ALL. 269 PC)], to allow him in fresh proceedings to renew the same claim viz., that the properties in question were properties of the respondents liable to attachment or, as he would now put it, that the respondents had severable interests in the properties which are liable to attachment, merely because he neglected at the proper stage in previous proceedings to support that claim by an argument of which he now wishes to avail himself."

It may be noticed that in that case there was final determination of the rights of the parties in the first execution petition in which the plea of executability of the decree against the right, title and interest of the respondents by virtue of Act of 1938 was available but was not urged. In the instant case, there has been no final determination of the rights of the parties in regard to their title to the land in dispute in the writ proceeding.

The principle that to attract the provisions of Section 11, C.P.C., there must be a final adjudication of the matter between the parties in earlier suit or proceeding is too well-settled to need elaboration. The same principle applies to constructive res judicata. In Kewal Singh vs. Lajwanti [AIR 1980 SC 161] this Court held :

> ".....as regards the question of constructive res judicata it has no application whatsoever in the instant case. It is well settled that one of the essential conditions of res judicata is that there must be a formal adjudication between the parties after full hearing. In other words, the matter must be finally decided between the parties. Here also at a time when the plaintiff relinquished her first cause of action the defendant was nowhere in the picture, and there being no adjudication between the parties the doctrine of res judicata does not apply."

It may be recalled that in this case the first respondent issued notice for eviction of the appellant from the land in dispute (under the Land Encroachment Act) on the ground that he was unauthorisedly in occupation of the Government land. As the appellant claimed title to the land in dispute and thus the title of the first respondent to the land in question was disputed, the High Court observed that the State could not resolve the issue of title in its favour and proceed under the Land Encroachment Act. In view of the rival claims to the land in dispute the High Court granted liberty to the first respondent to establish its title in the competent Civil Court. It is true that on the date of disposal of the Writ Appeal No.61 of 1978 (14.11.1983) the Act had come into force and that fact was not brought to the notice of the Division Bench of the High Court but there was no final adjudication on the question of rival claims of the parties to the title of the land in dispute on merit in Writ Appeal by the Division Bench of the High Court. Pursuant to the liberty granted to the first respondent by the learned Single Judge which was confirmed by the Division Bench the aforementioned suit, O.S.No.1497 of 1985, was in fact filed by the first respondent against the appellant in the Court of the IV Additional Judge, City Civil Court for declaration of title to and recovery of possession of the land in dispute. The first respondent had thus acted in accordance with the liberty granted to it by the High Court. It is by operation of law, under sub-section (8) of Section 8 of the Act, the said suit stood transferred to the Special Court. The first respondent also invoked the jurisdiction of the Special Court under Sections 7 and 8 of the Act by filing a petition against the appellant. For the reasons, stated above, the principle of constructive res judicata, on the ground that the fact of enforcement of the Act on September 6, 1982 was not brought to the notice of the Division Bench of the High Court at the time of disposal of the Writ Appeal, is not available to the appellant. Further, as a statutory right is created in favour of the State under the Act, to eradicate a public mischief, it cannot be precluded from having recourse to the provisions of the Act by operation of the principle of "might and ought" in Explanation IV of Section 11 C.P.C. when its title or interest had not been finally determined by the High Court. For these reasons, we cannot accept the contention of the learned senior counsel.

The upshot of the above discussion is that the Special Court is a Civil Court having original as well as appellate jurisdiction having all the trappings of a Civil Court and also a Criminal Court having powers of the Court of Sessions to which the provisions of the Code of Civil Procedure, the A.P. Civil Courts Act and the Code of Criminal Procedure, apply. The Special Court can take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed and determine the ownership, title to, or lawful possession of the land alleged to have been grabbed whose decision will be binding on all the persons interested. Mere allegation of land grabbing is sufficient to invoke the jurisdiction of the Special Court either suo motu or on application by any person including any officer or authority. In this view of the matter, we find no illegality in the conclusion arrived at by the High Court in affirming the finding with regard to the jurisdiction of the Special Court.

Now, adverting to the remaining two contentions, it is important to note that under the Act "land grabbing" is not only an actionable wrong but also an offence and a "land grabber" is an offender punishable thereunder. The definitions of the expressions "land grabber" and "land grabbing", in clauses (d) and (e), respectively, of Section 2 of the Act, apply to both civil and criminal proceedings. It is, therefore, essential to construe the definitions of the said expressions strictly. We shall first

examine the relevant provisions of the Act and then the case set up by the first respondent against the appellant before the Special Court to describe him as a land grabber.

Clauses (d) and (e) of Section 2 of the Act may be quoted here :

> "2. Definitions : - In this Act, unless the context otherwise requires, --
>
> (d) "land grabber" means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest;
>
> (e) "land grabbing" means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or a group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorised structures; and the terms "to grab land" shall be construed accordingly;"

A perusal of clause (d) shows that the expression "land grabber" takes in its fold : (1) a person or a group of persons who commits land grabbing; (2) a person who gives financial aid to any person for - (a) taking illegal possession of the lands, or (b) construction of unauthorised structures thereon; (3) a person who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation; (4) a person who abets the doing of any of the above mentioned acts; and (5) the successors in interest of such a person. Among these five categories, the first category is relevant for the present discussion -- a person or a group of persons who commits land grabbing.

Clause (e) of Section 2, quoted above, defines the expression "land grabbing" to mean : (1) every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons; (2) such grabbing must be : (i) without any lawful entitlement and (ii) with a view to : (a) illegally taking possession of such lands; or (b) to enter into or create illegal tenancies, lease and licences agreements or any other illegal agreements in respect of such lands; or (c) to construct unauthorised structures thereon for sale or hire; or (d) to give such lands to any person on (i) rental or (ii) lease and licence basis for construction, or (iii) use and occupation of unauthorised structures.

Inasmuch as the afore-mentioned expressions are defined employing the term "grabbing", it is necessary to ascertain the import of that term. It is not defined in the Act. It is not a technical term or a term of art so it has to be understood in its ordinary common meaning.

The meaning of the term "grab" in the New International Webster's Comprehensive Dictionary of the English Language, is given as follows :

> "To grasp or seize forcibly or suddenly; to take possession of violently or dishonestly; to make a sudden grasp. See synonyms under grasp - (i) The act of grabbing, or that which is grabbed. (ii) A dishonest or unlawful taking possession or acquisition (iii) An apparatus for grappling."

In Words and Phrases, permanent edition, Vol.18, the meaning of "grab" is noted as under :

> "The word "grab" means an act or practice of appropriating unscrupulously, as in politics. Smith v. Pure Oil Co., 128 S.W.2d 931, 933, 278 Ky.430.
>
> The word "grab" means a seizure or acquisition by violent or unscrupulous means. Smith v. Pure Oil Co., 128 S.W.2d 931, 933, 278 Ky.430.
>
> The word "grab" means to seize, grasp, or snatch forcibly or suddenly with the hand, hence to take possession of suddenly, violently, or dishonestly. Smith v. Pure Oil Co., 128 S.W.2d 931, 933, 278 Ky.430."

Corpus Juris Secundum, Volume 38, records the meaning of the term "grab" thus :

> "As a verb, to seize, grasp or snatch forcibly or suddenly with the hand, hence to take possession of suddenly, violently, or dishonestly."

In Concise Oxford Dictionary, the following meanings of the word "grab" are noted :

> "A seize suddenly; capture, arrest; take greedily or unfairly; attract the attention of, impress; make a sudden snatch at; intr. (of the brakes of a motor vehicle) act harshly or jerkily. - n. (i) a sudden clutch or attempt to seize; (ii)a mechanical device for clutching."

The various meanings, noted above, disclose that the term "grab" has a broad meaning - to take unauthorisedly, greedily or unfairly - and a narrow meaning of snatching forcibly or violently or by unscrupulous means. Having regard to the object of the Act and the various provisions employing that term we are of the view that the term "grab" is used in the Act in both its narrow as well as broad meanings. Thus understood the ingredients of the expression "land grabbing"

> would comprise of (i) the factum of an activity of taking possession of any land forcibly, violently, unscrupulously, unfairly or greedily without any lawful

entitlement and (ii) the mens rea/intention -- "with the intention of/with a view to" (a) illegally taking possession of such lands or (b) enter into or create illegal tenancies, lease and licences agreements or any other illegal agreements in respect of such lands; or (c) to construct unauthorised structures thereon for sale or hire; or (d) to give such lands to any person on (i) rental or (ii) lease and licence basis for construction, or (iii) use and occupation of unauthorised structures.

A combined reading of clauses (d) and (e) would suggest that to bring a person within the meaning of the expression "land grabber" it must be shown that : (i) (a) he has taken unauthorisedly, unfairly, greedily, snatched forcibly, violently or unscrupulously any land belonging to government or a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person; (b) without any lawful entitlement; and (c) with a view to illegally taking possession of such lands, or enter or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands or to construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation of unauthorised structures; or (ii) he has given financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon; or

(iii) he is collecting or attempting to collect from any occupiers of such lands rent, compensation and other charges by criminal intimation; or (iv) he is abetting the doing of any of the above-

mentioned acts; or (v) that he is the successor-in-interest of any such persons.

It must be borne in mind that for purposes of taking congnizance of a case under the Act existence of an allegation of any act of land grabbing is the sine qua non and not the truth or otherwise of such an allegation. But to hold that a person is a land grabber it is necessary to find that the allegations satisfying the requirements of land grabbing are proved.

To make out a case in a civil case that the appellant is a land grabber the first respondent must aver and prove both the ingredients -- the factum as well as the intention -- that the appellant falls in the categories of the persons, mentioned above (clause (d) of Section 2 of the Act), has occupied the land in dispute, which belonged to the first respondent, without any lawful entitlement and with a view to or with the intention of illegally taking possession of such land or entering into the land for any of the purposes mentioned in clause (e) of Section 2 of the Act, summarised above.

What needs to be looked into in the present controversy is : whether the appellant has any lawful entitlement (proprietory or possessory) to the land in dispute and had come into possession of the land in dispute unauthorisedly. Here, we may note the contention of Mr.Parasaran that in effect the suit of the first respondent-plaintiff, being a suit for declaration of title and ejectment of the appellant from the land in dispute, it ought to have been dismissed; the first respondent should succeed on the strength of its own title and it cannot take advantage of the defects in the title of the

appellant to the land in dispute. We may notice the case set up by the parties in their pleadings and the documentary and oral evidence adduced by them.

The case of the first respondent stated in the concise statement enclosed to the application filed before the Special Court on March 20, 1992 and as contained in the plaint filed in the court of the IV Additional Judge, City Civil Court, Hyderabad (O.S. No.1497 of 1985) is as follows : the first respondent is the absolute owner of the land of an extent of 2 acres and 6 guntas in Survey Nos.9/15 paiki, 9/16 and 9/17, forming part of the Hussain Sagar Tank Bund land, situated at Khairatabad village, Hyderabad Dist., Hyderabad, there were wrong entries in the record of rights which were corrected by the Collector on October 5, 1959. It is stated, alternatively, if the land in dispute formed part of the Inam land the same had vested in the first respondent with effect from July 20, 1955, the date of vesting as per Section 3 of the A.P. (Telangana Area) Abolition of Inams Act, 1955 (Act No.8 of 1955) (for short, 'the Inams Act'). None of the heirs of the alleged Inamdar appeared before the Collector, Hyderabad Distt., Hyderabad, for claiming registration as occupants under Section 10 of the said Act. The land in dispute, it is noted, was shown as Maqta land belonging to Naimatullah Shah for some time and thereafter as Inam land and the appellant claimed to be the lessee of Mohd. Nooruddin Asrari, one of the successors to the said Maqta; he occupied the said land in the year 1958 or so and raised a building known as "Jala Drushyam". The claim of the appellant was not proper, valid and legal because the land never belonged to the said Maqta; even otherwise it vested in the Government with effect from the said date and the order of the Collector, correcting entries in the record of rights, had become final. The plaint refers also to the facts that the land in dispute was the subject matter of O.S.No.13 of 1958 on the file of the Additional Chief Judge, City Civil Court, Hyderabad, filed by one Rasheed Shapurji Chenoy, which was dismissed holding that it was Government land. On giving an undertaking in the said suit, the appellant with the permission of the Court constructed the said house "Jala Drushyam" and, therefore, the possession of the appellant partakes the character of permissive possession. After the dismissal of the suit the first respondent issued notice of eviction to the appellant under Section 6 of the Land Encroachment Act, on the ground that he was in unauthorised occupation of land in dispute, but the notice was quashed in the writ petition filed by the appellant and that order was upheld in writ appeal giving liberty to the first respondent to establish its title in a Civil Court. The first respondent sought from the Special Court the following reliefs : to declare the appellant a land grabber and to restore possession of the land grabbed by him.

The case of the appellant was that the land in dispute was part of Sarfekhas land and that after Inam Inquiry, ordered by H.E.H. the Nizam, Muntakhab was issued in favour of the Inamdar (Maqtedar) and thereafter succession was granted in favour of his vendor (lessor). It was also stated in the written statement that the appellant has been in possession of the land from November 1954 and that before him his predecessors-in- title were in possession for innumerable years as Inamdars, so he was entitled to tack their possession for purposes of perfecting his title by adverse possession; even otherwise from the date of his own coming into possession in 1954 he perfected his title by adverse possession as against the first respondent.

The Special Court has determined that the occupation of the land in dispute by the appellant is without any lawful entitlement and decided the question of the ownership and title to and lawful

possession of the land in dispute on appreciating the evidence on record. It held, inter alia, that the land in dispute was not part of Inam and that even if it was so there was no valid confirmation of grant of the land in dispute by the civil administrator under Ex.B-6 and consequently no title had passed under Ex.B-9 to the vendor of the appellant and hence no title was obtained by the appellant under Ex.B-40. Though the findings recorded by the Special Court in regard to absence of lawful entitlement of the appellant to the land in dispute and upholding the title of the first respondent that it is a Government land, are findings of fact which were not interfered with by the High Court in the Writ Petition filed by the appellant, yet to satisfy ourselves, we have gone through the depositions of PW 1 and RW 1 and perused the documentary evidence in great detail; the original record is in Urdu. We find no valid reason to take a different view of the matter and inasmuch as we are sustaining the said findings it is not necessary to re-do the whole exercise of discussing all the evidence here. However, we shall refer to a few important documents and aspects which clinch the issue. In regard to the ingredients of the expression 'land grabber', it is necessary to point out that it is only when a person has lawful entitlement to the land alleged to be grabbed that he cannot be brought within the mischief of the said expression. A mere prima facie bona fide claim to the land alleged to be grabbed by such a person, cannot avert being roped in within the ambit of the expression "land grabber". What is germane is lawful entitlement to and not a mere prima facie bona fide claim to the land alleged to be grabbed. Therefore, the observation of the Division Bench of the High Court in the said Writ Appeal No.61 of 1978 that the appellant can be taken to have prima facie bona fide claim to the land in dispute which was relevant for the said Land Encroachment Act, cannot be called in aid as a substitute for lawful entitlement to the land alleged to be grabbed, which alone is relevant under the Act.

A copy of the statement of Maqta Enquiry (Ext.B-15) which is in Urdu shows that the Maqta was granted by the Qutub Shahi rulers, which became Sarfekhas property (private property of the Nizam) subsequently. In the Maqta enquiry the Talukdar (Sarfekhas) recommended that Maqta be re-granted in favour of Mohd. Abdul Quadir and others (who were ancestors of the lessor of the appellant). The location of the Maqta (which is referred to as, 'Maqta Naimatullah Shah') was mentioned as adjacent to Hussain Sagar. Ex.A-20 is a copy of Munthkhab Statement of Inam Enquiry (Sarfekhas) bearing execution No.1050 dated 09.01.1327 Fasli. It shows that as per the letter of Administrative Committee of Sarfekhas (Mubark) bearing No.1185 dated 19.09.1326 Fasli, H.E.H. the Nizam had sanctioned confirmation of cash grant and the Maqta excluding the land covered by graveyard and the King's bungalow. It is also clear that the land which was appurtenant to the King's bungalow was returned to Sarfekhas and it was subsequently directed to be sold for adequate price by H.E.H. the Nizam on 12.02.1343 Fasli. A perusal of Ex.A-26 lends support to the fact that the original Muntakhab No.1050 of 1327 Fasli of Maqta Naimatullah Shah had excluded the King's bungalow with the land and the graveyard while sanctioning the confirmation of Maqta by H.E.H. the Nizam. It appears to us that a palace was constructed during the lifetime of H.E.H. the Nizam VI which was referred to as King's bungalow and which later came to be known as the Secretariat. The land between the Secretariat and the Hussain Sagar was part of the excluded land and was lying vacant. It was the land of the Sarfekhas and in regard to that land various persons including predecessors-in- interest of the appellant made their claims but all the claims were rejected by the then Sadarul Maham (Minister) of Sarfekhas and it was directed that the land should be under the control and protection of Babe Hukumat (GAD) and the Revenue Department was

specifically directed to supervise the same. That order was appealed against before Moaziz Committee of Sarfekhas (comprising of the Chief Justice and two Hon'ble Judges of the High Court of the then State of Hyderabad). The Committee confirmed the said order of the Minister and dismissed the appeals on Mehr 30, 1357 Fasli. Thus, it is abundantly clear that Survey Nos.9/15 paiki, 9/16, 9/17, 9/18, 9/19 were not part of Maqta which was reconfirmed in favour of the predecessors-in-interest of the appellant. They remained land of Sarfekhas (private estate of the Nizam) which merged in Diwani, that is State Government, on 5.2.1949 (Ex.A-30). It is noted in Ex.B-20, letter from Tehsil Taluk, Hyderabad West, addressed to the Collector, Hyderabad, dated 27.07.1954 that Survey Nos.9/15, 9/16, 9/17, 9/18 and 9/19 of Maqta Naimatullah Shah are situate in between the Secretariat and Hussain Sagar Tank. That was also stated to by the appellant in his deposition. Inasmuch as the Maqta remained under attachment and in the possession of the Sarfekhas during the period of Inam Enquiry an attempt was made to show that under Ex.B-11, a letter dated 12.10.1356 Fasli (English translation Ex.B-12), the Maqta was directed to be released in favour of the Maqtadar. Ex.B-13 a certified copy of the panchnama dated 02.11.1356 Fasli is filed to show that the land bearing Survey Nos.9/2, 9/10, 9/12, 9/15 and 9/16 to 9/20 measuring 54 acres, was inspected and while Survey No.9/17 and 9/18 measuring 7 acres and 7 guntas alone were retained in the Government possession the rest of the Survey numbers were put in possession of the Inamdar. English translation of Ex.B-13 is marked as Ex.B-14. Ex.B-15 English translation is a certified copy of receipt dated 02.11.1356 Fasli which was filed to show that possession was taken by the Maqtadar. These documents were, however, treated by the Special Court as spurious. The said documents are certified copies and they are in Urdu. A careful reading of Exs.B-11 in Urdu and B-12 (English translation) discloses that the recitals:

> "Hence the Makhtha may be restored in favour of Syed Shah Mohd. Wajihullah Hussain Asrari, Makhthedar of the Makhtha Niamathullah Shah and after release and handing over a detailed compliance report, should be sent along with the receipt"

are out of context with the other recitals therein. Such an important order directing delivery of possession of land, bearing S.Nos. noted above, which was excluded from regrant of Maqta under Muntakhab, could not have been directed to be delivered under Ex.B-11. In the ordinary course of event a decision ought to be taken first and then only it would be communicated. Such a decision should be in the file. No order was filed in support of Ex.B-11. Further, the subject-matter of the letter dated 12.10.1356 Fasli (Exs.B-11 and B-12) from the First Talukdar, District Atraf-e-Balda, Sarfekhas addressed to the Tehsildar, Taluk West shows that the proceeding commenced on the application for waiving the land revenue on the ground that the land was under attachment and in the possession of the Government. It is strange to note that in reply to an application to waive the land revenue the possession of the land was directed to be delivered by the first Taluqdar in his letter Ex.B-11 dated 12.10.1356 Fasli (English translation Ex.B-12) and purported to have been delivered under Exs.B-13 and B-14 dated 2nd Mehr 1356 (2.11.1356 Fasli) (wrongly noted in the English translation as 2.11.1355 Fasli), while the appeal in regard to the land of which the said S.Nos. are a part, was still pending before the Moaziz Committee. From Ex.A-27 it is seen that the Moaziz Committee decided the appeal on Mehr 30, 1357 (30.11.1357 Fasli) after sending the said letter (Ex.B-

11). These documents are not originals. They are certified copies and, therefore, it is not possible to make out whether the portion noted above as out of context, really formed part of the letter as in the absence of the order including the said S.Nos. in the regrant directing delivery of possession, gives rise to lot of suspicion. We say no more. For the aforementioned reasons, they do not inspire any confidence to be accepted as correct. In view of these strong reasons we are not persuaded to disagree with the view of the Special Court that they are spurious documents. Thus, it is clear that the land in dispute was not part of Maqta land. That land remained as Sarfekhas land and on merger of Sarfekhas in Diwani on February 5, 1949, it became Government land. Even assuming that it was part of regranted Inam land, on coming into force of the Inams Act, it vested in the Government. Admittedly, neither the Inamdar nor the appellant obtained occupancy certificate in respect of the land in dispute under Inams Abolition Act. In support of the allegations in the petition and the plaint PW 1 has categorically stated that the appellant is a land grabber and he was not cross-examined on that aspect. We have, therefore, no hesitation in endorsing the finding that the said Mohd. Nooruddin Asrari had no title to the land in dispute and consequently the appellant acquired no title to it.

Having regard to the absence of any material on record, all the circumstances and the probabilities of the case, it is hard to believe that at any time before or on the date of execution of Ex.B-39 the lessor of the appellant who had no title to or interest in the land which was directed to be under the supervision of the GAD, was in possession of the land in dispute which was lying vacant.

It is relevant to note that as the decision of the Special Court on the question of title to the land in dispute was not based on the order of the Collector contained in the letter dated October 5,1959 (Ex.A-14), the validity of that order is inconsequential. We, therefore, do not propose to examine that aspect. We may note here that the Special Court did not invoke the presumption under Section 10 of the Act against the appellant. It is also evident that the title of the first respondent to the land in dispute was upheld de hors the weakness in the title of the appellant.

On a careful perusal of the judgment of the Special Court on the question of title of the first respondent and that of the appellant and his lessor-Inamdar we are satisfied that neither any relevant material was excluded from consideration nor any irrelevant material was relied upon by the Special Court in recording its finding. There was, therefore, no scope for the High Court to interfere with those findings. In our view, the High Court committed no error of law in not interfering with the findings of the Special Court in regard to the title of the first respondent and absence of title in the appellant to the land in dispute [See : Omar Salay Mohamed Sait vs. Commissioner of Income-tax, Madras [AIR 1959 SC 1238]. On the conclusions arrived at by us no interference is warranted by this Court in this appeal filed under Article 136 of the Constitution of India. [See : Mehar Singh & Ors. vs. Shiromani Gurudwara Prabandhak Committee [2000 (2) SCC 97].

To complete the discussion on the lawful entitlement, the appellant's claim of title to the land in dispute by prescription remains to be examined. The contention of Mr.Parasaran is that the appellant, who has been in possession of the land since 1954 on the basis of Ext.B-39 (an unregistered agreement for perpetual lease), perfected his title by adverse possession as on the date

of the suit on November 25, 1985.

Mr.Altaf Ahmad, on the other hand, relied on the conduct of the appellant to show that he had no requisite animus to possess the land in dispute adverse to the title and interest of the first respondent and that the essential requirements of adverse possession were not satisfied as neither the appellant had the requisite animus nor he fulfilled the requirement of possession of the land in dispute for the statutory period of 30 years; both the Special Court as well as the High Court concurrently held that the appellant did not perfect his title to the land in dispute by adverse possession and that finding would not be open to challenge in this appeal.

The Special Court, on the pleadings of the parties, framed issue No.5, noted above. The onus of proving that issue is on the appellant who claims title by adverse possession. The question of a person perfecting title by adverse possession is a mixed question of law and fact. The principle of law in regard to adverse possession is firmly established. It is a well-settled proposition that mere possession of the land, however long it may be, would not ripe into possessory title unless the possessor has 'animus possidendi' to hold the land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would, in an appropriate case, be sufficient indication of the animus possidendi to hold adverse to the title of the true owner. But such an assertion of title must be clear and unequivocal though it need not be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as the animus possidendi must be shown to exist. Where, however, at the commencement of the possession there is no animus possidendi, the period for the purpose of reckoning adverse possession will commence from the date when both the actual possession and assertion of title by the possessor are shown to exist. The length of possession to perfect title by adverse possession as against the Government is 30 years.

The appellant (defendant) in his written statement averred that he was claiming title under Mohd. Nooruddin Asrari who was successor of the original Inamdar Sheik Naimatullah Shah. The land in dispute is a part of the maqta land which was in his possession from November 28, 1954 under an agreement for perpetual lease which was confirmed under the registered lease deed executed on December 11/12, 1957. He alleged that he constructed a small structure in 1955 and thereafter, having taken due permission, constructed a pucca building. He denied that the said land came in his possession in 1958 as alleged in the plaint. He stated that he had been in possession adverse to the plaintiff-the first respondent since November 28, 1954 for more than 30 years prior to the filing of the suit on November 25, 1985. It is further averred that his predecessor-in-title being in possession of the said land for innumerable years prior to 1954 in their own right as Inamdar, he is entitled to tack on their possession to perfect his title by adverse possession.

The first respondent-plaintiff, perhaps with a view to foreclose the plea of adverse possession, stated in the plaint itself that the possession of the appellant-defendant could not amount to adverse possession for many reasons; the appellant raised the building with the permission of the court while O.S.No.13 of 1958 filed by Rasheed Shahpurji Chenoy was pending before the Additional Chief Judge, City Civil Court, Hyderabad, after giving an undertaking and in view of the undertaking his possession partakes the character of permissive possession; he paid Siwaijama and applied for

occupancy certificate. The first respondent had instituted eviction proceeding by issuing notice against the defendant under Section 6 of the Land Encroachment Act.

To appreciate the plea of the first respondent that the appellant's possession of the land in dispute has the character of permissive possession so he cannot acquire title by adverse possession, it will be appropriate to refer to the averments in the plaint to understand their true import, which are as follows :

> "The suit lands in the beginning were open and vacant tank bed lands and the defendant raised the building "Jala Drushyam" with the permission of the Court while O.S.No.13 of 1958 was pending before the Court of the Additional Chief Judge, City Civil Court, Hyderabad, and the undertaking of the defendant given in the shape of a bond, while seeking permission to construct the said building, was to the effect that he would not claim any compensation from the plaintiff for the building raised on the suit-lands in case the same are ultimately declared and held to be the Government lands.....The possession of the defendant in view of his undertaking in the above suit partakes the character of permissive possession and in that view of the matter also the defendant cannot claim adverse possession against the plaintiff. (emphasis supplied)"

In the concise statement filed along with the application dated March 22, 1992 before the Special Court the first respondent stated :

> "Pending O.S.No.13 of 1958 the respondent herein (the appellant) constructed a building Jala Drushyam. After the dismissal of the suit. The Government of A.P. initiated eviction proceedings. The possession of the respondent (the appellant) in view of his undertaking given in the Trial Court amounts to permissive possession."

From the above averments, it is evident that permission was granted by the court to the appellant to construct the building 'Jala Drushyam'. Therefore, the said building could be said to be a construction with permission of the Court and not unauthorised. But certainly the appellant's possession of the land in dispute, if otherwise adverse to the title of the first respondent, does not acquire the character of permissive possession on the ground the appellant sought permission of the Court to erect a building thereon. We are, therefore, of the view that the said averments cannot come in the way of the appellant in acquiring title by adverse possession if other requirements of adverse possession are satisfied.

As to the period of the appellant's possession, Mr.Parasaran contended, that though Ex.B-40 perpetual lease agreement was registered on December 12, 1957 yet it would relate back to the date of Ex.B-39 (28.11.1954) which would be the date of commencement of possession. He sought to derive support from Thakur Kishan Singh (Dead) vs. Arvind Kumar [1994 (6) SCC 591]. We cannot accept the submission as a correct proposition of law. In that case the lease deed was executed on 5.12.1949 but it was registered on 30.3.1950. On that factual background this Court held :

> "Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. (See :
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> Ram Saran Lall vs. Mst.Domini Kuer [1962 (2) SCR 474 and Nanda Ballabh Gururani vs. Smt.Maqbol Begum [1980 (3) SCC 346]. Since, admittedly, the lease deed was executed on 5.12.1949, the plaintiff after registration of it on 3.4.1950 became owner by operation of law on the date when the deed was executed."

In the instant case Ex.B-39 (unregistered perpetual lease agreement dated November 28, 1954) was not registered subsequently. Ex.B-40 the perpetual lease deed dated 11.12.1957 is a different document which was registered on 12.12.1957. Therefore, Ex.B-40 would relate back to the date of its execution i.e. 11.12.1957 on its subsequent registration on 12.12.1957 but not on the date of execution of Ex.B-39 i.e. 28.11.1954. The Principle laid down in the above case is, therefore, of no benefit to the appellant.

The Special Court found that the appellant's possession could not be ascribed to the date of the agreement for lease deed dated 28.11.1954 (Ex.B-39) or registered lease deed dated 11.12.1957 (Ex.B-40) which were excluded from consideration. In regard to Ex.B-39 the Special Court held that it was a tampered document; the survey numbers of the land leased were given in it as Survey Nos.9/15 and 9/17 which were altered to appear as Survey Nos.9/15 to 9/18 and the extent of the land was not mentioned therein. The Special Court noted that in the absence of original of Ext.B-40, it was not possible to say whether Ex.B-40 also suffered from the same vice of subsequent alteration in the survey numbers, therefore, it declined to rely on Ex.B-40 also. In view of the criticism of the Special Court we perused the Urdu documents Ex.B-39 and Ex.B-40. Survey Nos."9/15 and 9/17" (Ex.B-39) were altered to appear as "9/15 to 9/18". This is visible to the naked eye. The alteration was not authenticated so the criticism of the Special Court is well-founded. It is also noticed that the original of Ex.B-40 was not filed in the court and no case is made out to lead secondary evidence. Further in Exs.B-13 and B-14 (which are discussed above) it is specifically mentioned that S.Nos.9/17 and 9/18 which were selected for the offices of the Secretariat were retained with the Government. If that be so, it remained unexplained as to how the appellant obtained the said S.Nos. on lease from the said Nooruddin. This clearly shows the contradiction in the claim of the appellant which makes it unacceptable. After excluding the said documents from consideration the Special Court held that the solitary statement of the appellant that his adverse possession commenced from November 28, 1954, could not be accepted to hold that he has been in continuous possession for a period of 30 years as no receipt of payment of rent (nuzul) under the perpetual lease agreement Ex.B-39 was filed to prove that the appellant has been in possession of the said land from November 28, 1954. The Special Court counted the period of possession of the land in dispute from the date the appellant obtained permission for construction of the house under Ex.B- 42 dated 09.08.1958 and the preceding correspondence under Exs.B-60 to B-62 between March, 1958 and August, 1958. Pointing out that the suit was filed on November 25, 1985, so the period of 30 years was not completed from 1958, it rejected the plea of adverse possession.

In regard to the animus of the appellant to possess the land in dispute adverse to the interest of the first respondent, the Special Court pointed out that the appellant applied for occupancy certificate to the concerned authority under the Inams Abolition Act which nullified the animus of adverse possession. The Special Court also relied on Ex.A-42 (Ex.B-

43) issued by the State demanding siwai jamabandi on May 14, 1960 and payment of the same under Exs.A-44 and A-45 dated June 30, 1960 to show that the requisite animus was lacking. These documents were put to the appellant when he was in the witness box and he admitted the same. On the basis of the above evidence the Special Court came to the conclusion that the appellant failed to prove adverse possession. In the said writ petition the High Court did not find any illegality in the approach or decision of the Special Court and declined to interfere with the said finding.

We have already noted above the requirements of adverse possession.

In Balkrishan Vs. Satyaprakash & Ors. (J.T. 2001 (2) SC 357), this Court held :

> "The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three "nec" - nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in continuity in publicity and in extent. In S.M. Karim v. Mst. Bibi Sakina (AIR 1964 SC 1254) speaking for this Court, Hidayatullah, J. (as he then was) observed thus :
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> "Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found."

In that case the requirement of animus possidendi was not adverted to as on facts it was shown to be present; the controversy, however, was about the other ingredient of adverse possession. It is clear that it must be shown by the person claiming title by prescription that he has been in possession of the land for the statutory period which is adequate in continuity in publicity and in extent with the animus of holding the land adverse to the true owner.

Mr.Parasaran, however, contended and reiterated in his written submissions that possession in assertion of one's own title was animus of adverse possession and that passing an adverse order against the appellant or the appellant himself filing an application to any statutory authorities for occupancy certificate would not interrupt his adverse possession of the land in dispute. It was also contended that as a derivative title holder he was entitled to tack his possession to that of his predecessor-in-interest and that in any event the presumption of the continuity of state of things backwards could also be drawn as the appellant's possession from 1958 was accepted and the possession earlier to 1958 should also be presumed.

Regarding the animus of the appellant, admittedly he claimed as a lessee under the Inamdar. Indeed in his written statement filed in Rasheed Shahpurji Chenoy'suit (O.S.No.13 of 1958 on the file of Additional Chief Judge, City Civil Court, Hyderabad) he claimed to be a lessee under the Inamdar.

He, however, did not assert title to the land in dispute in himself nor did he lay any claim on the ground of adverse possession. Even otherwise there is no material to show that between November 28, 1954 (unregistered perpetual lease agreement, assuming it to be free from interpolation and admissible as agreement for lease and (Ex.B-40) registered lease deed dated December 11, 1957 (assuming that the secondary evidence is admissible) and the date of filing of the written statement on January 28, 1987 the appellant claimed title to the land in dispute otherwise than under Ex.B-40 much less by way of asserting adverse title. It is only in the written statement filed in the present suit that he pleaded adverse possession for the first time. The possession of the said land from the date of Ex.B-39, 1954, till the date of the filing of the written statement in 1987 cannot, therefore, be treated as adverse because there was no animus possidendi during the said period. Before the date of filing the written statement he never claimed title to the land in dispute adverse to the State. On the other hand, he paid siwai jamabandi and applied for occupation of rights. Indeed in his deposition as R.W.1 in chief examination before the Special Court he stated, "on being satisfied about the nature of the Inam, I entered into an agreement of perpetual lease on 28.11.1954 with Inamdar as per Ex.B-39.....I have taken possession from the Maqtedar under Ex.B-39 on 28-11-1954. Since then I am in occupation uninterruptedly and enjoying the same."

We found no assertion of title by adverse possession in his deposition. Further there is nothing on record to show that his lessor, Mohd. Nooruddin Asrari, ever claimed the land in dispute adverse to the State. On these facts there is no scope to invoke the principle of tacking the possession of the Inamdar or presumption of continuity of possession backward.

There can be no doubt that passing of adverse order against the appellant would not cause any interruption in his possession [See : Balkrishan vs. Satyaprakash (supra)]. So also filing of application before statutory authority under Inams Abolition Act for occupancy rights, in our view, causes no interruption in the continuity of possession of the appellant but it does abrogate his animus to hold the land in derogation of the title of the state and breaks the chain of continuity of the animus.

In the light of the above discussion we hold that the appellant neither proved factum of possession of the land in dispute for period of 30 years nor succeeded in showing that he had animus possidendi for the whole statutory period. Therefore, we cannot but maintain the confirming view of the High Court that the appellant failed to acquire title to the land in dispute by adverse possession. We may also add that the lessee of a Maqtedar (the Inamdar) cannot acquire title to the demised land by adverse possession either as against the State or the Maqtedar (Inamdar) so long as his possession under the lease continues.

Mr.Parasaran has contended that should the point of adverse possession be found against the appellant, the principle of lost grant would apply as the appellant has been in possession of the land in dispute for a considerable length of time under an assertion of title. In support of his contention he placed reliance on Monohar Das Mohanta Vs. Charu Chandra Pal and Ors. (A.I.R. 1955 S.C. 228).

The principle of lost grant is a presumption which arises in cases of immemorial user. It has its origin from the long possession and exercise of right by user of an easement with the acquiescence

of the owner that there must have been originally a grant to the claimant which had been lost. The presumption of lost grant was extended in favour of possessor of land for a considerably long period when such user is found to be in open assertion of title, exclusive and uninterrupted. However, when the use is explainable, the presumption cannot be called in aid. A constitution Bench of this Court explained the principle in Monohar Das Mohanta (supra) thus, "The circumstances and conditions under which a presumption of lost grant could be made are well settled. When a person was found in possession and enjoyment of land for a considerable period of time under an assertion of title without challenge, Courts in England were inclined to ascribe a legal origin to such possession, and when on the facts a title by prescription could not be sustained, it was held that a presumption could be made that the possession was referable to a grant by the owner entitled to the land, but that such grant had been lost. It was a presumption made for securing ancient and continued possession, which could not otherwise be reasonably accounted for. But it was not a 'presumptio juris et de jure'. A presumptio juris et de jure, means an irrebuttable presumption, is one which the law will not suffer to be rebutted by any counter-evidence, but establishes as conclusive; whereas a presumption juris tantum is one which holds good in the absence of evidence to the contrary, but may be rebutted. [Juris et de jure - Of law and of right] and the Courts were not found to raise it, if the facts in evidence went against it.

> "It cannot be the duty of a judge to presume a grant of the non-existence of which he is convinced" observed Farwell, J. in - 'Attorney- General Vs. Simpson', 1901-2 Ch.671 at p.698 (A)."

[para 7 page 230] In that case the possession of the defendant was claimed to be for over 200 years but there was no finding on the length of possession. On the ground, inter alia, that the land was part of Mal lands (assessed land) within the zamindari, it was held that there was no scope for applying presumption of lost grant. In the case on hand the appellant traces his possession from 1954 under an unregistered perpetual lease from the erstwhile Inamdar (Maqtedar). Therefore, the presumption of lost grant will not be available to the appellant.

Thus, it follows that the appellant has unauthorisedly come into possession of the land in dispute of the first respondent without lawful entitlement.

Now reverting to the other ingredient of the definition of the expression 'land grabbing' -- intention of the appellant - embodied in the phrase "with a view to" illegally taking possession of the land in dispute or entering into the land for any of the purposes mentioned in clause (e) of Section 2, the Special Court discussed exhaustively both the documentary evidence on record and the oral evidence of the appellant under the caption - design of the first appellant in obtaining the documents of title and resisting possession -- and concluded that he was fully aware of the infirmity of the title of his vendor for want of confirmation of the grant by the civil administrator and subsequent mutation proceedings, willingly suffered siwai jama assessment, paid the same and raised structures when a suit was pending and therefore he was a land grabber. The High Court having noted the discussion of the Special Court on the said issue and having adverted to the evidence, declined to interfere with that finding in the writ petition.

The requisite intention which is an important ingredient of the land grabber, though not stated specifically, can be inferred by necessary implication from the averments in the petition and the plaint and the deposition of witness like any other fact. If a person comes into occupation of any Government land under the guise of a perpetual lease executed by an unauthorised person having no title to or interest in the land it cannot but be with a view to illegally taking possession of such land. We make it clear that we are expressing no opinion on the point whether those averments would constitute 'mensrea' for purposes of offence under the Act.

We have carefully gone through the concise statement accompanying the application filed by the first respondent before the Special Court on March 20, 1992 and the plaint in O.S.No.1497 of 1985 filed by the first respondent in the Court of the IV Additional Judge, City Civil Court, Hyderabad. It is also averred that the appellant occupied the land in dispute in the year 1958 and raised building "Jala Drushyam" and on coming to know of it the first respondent took action for his eviction under Section 6 of the Land Encroachment Act. It is also stated that the claim of the appellant to the land in dispute is not proper, valid or legal as it never belonged to Naimatullah Shah Maqta and even otherwise the land ceased to be Inam land from July 20, 1955 and had vested in the first respondent and none of the heirs of Naimatullah Shah had come forward to be declared as occupant under the Inam Abolition Act. The land in dispute is described by the first respondent as land grabbed and a declaration is sought from the Special Court that the appellant is a land grabber.

It may be observed here that though it may be apt yet it is not necessary for any petitioner who invokes the jurisdiction of the Special Court/Special Tribunal to use in his petition under Sections 7(1) and 8(1) of the Act, the actual words employed in the relevant provisions of the Act, namely, grabbing of the land without any lawful entitlement and with a view to or with the intention of (a) illegally taking possession of such lands or (b) enter into or create illegal tenancies, leases or licences agreements or any other illegal agreements in respect of such lands; or (c) to construct unauthorised structures thereon for sale or hire; or (d) to give such lands to any person on (i) rental or (ii) lease and licence basis for construction, or (iii) use and occupation of unauthorised structures, as the case may be. Prima facie it will satisfy the requirements of the Act if the petitioner alleges that the respondent is a land grabber or that he has grabbed the land. What is pertinent is that the allegations in the petition/plaint, in whatever language made, should make out the ingredients of land grabbing against such a person or his being a land grabber within the meaning of those expressions under the Act, as explained above. It is only when the allegations made in the petition/plaint are proved the activity of taking possession of the land will fall within the meaning of land grabbing that such a possessor can be termed as a "land grabber" within the meaning of that expression under the Act.

It is generally true that in the absence of necessary pleadings in regard to the ingredients of the definition of "land grabbing" no finding can validly be recorded on the basis of the evidence even if such evidence is brought on record. Mr. Parasaran cited the judgment of this Court in Sri Venkataramana Devaru & Ors. vs. The State of Mysore & Ors. (1958 SCR 895 at 906) to support his submission that without necessary pleading, the evidence on record cannot be looked into. However, it is a settled position that if the parties have understood the pleadings of each other correctly, an issue was also framed by the Court, the parties led evidence in support of their

respective cases, then the absence of a specific plea would make no difference. In Nedunuri Kameswaramma vs. Sampati Subba Rao [1963 (2) SCR 208], Hidayatullah,J. (as he then was) speaking for a three-Judge Bench of this Court observed at page No.214 thus :

> "Though the appellant had not mentioned a Karnikam service inam, parties well understood that the two cases opposed to each other were of Dharmila Sarvadumbala inam as against a Karnikam service inam. The evidence which has been led in the case clearly showed that the respondent attempted to prove that this was a Dharmila inam and to refute that this was a Karnikam service inam. 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 mis-trial which vitiates proceedings."

The same view is expressed by this Court in the following two cases : Kali Prasad (Dead) by Lrs. & Ors. vs. M/s.Bharat Coking Coal Ltd. & Ors. [1989 Supl. (1) SCC 628] and Sardul Singh vs. Pritam Singh & Ors. [1999 (3) SCC 522].

Now, in the instant case the appellant has never pleaded before the Special Court that necessary pleading in regard to the requirements of land grabbing is lacking in the case. On the other hand, he understood the averments in the petition read with the plaint correctly as allegations of land grabbing as can be seen from the affidavit containing objections to the Gazette Notification dated April 1, 1992, referred to above, filed on April 16, 1992 (affidavit was attested on April 10, 1992). He stated "I deny the petitioner's allegation of land grabbing whatsoever, made in its petition dated 20.3.1992". He further stated that the documents filed by him and the first respondent "nullify the petitioners allegation of land grabbing, claim of title over the land and claim of right to get the possession of the land and the building.....". On this pleading the Special Court framed issue No.6 aforementioned. The parties adduced evidence, oral and documentary, on that issue. We have already discussed documentary evidence above. PW 1 in his statement categorically stated that the appellant was a land grabber. What is surprising to note is that there was no cross- examination on that aspect. What is more surprising is that in his deposition he did not even state that he was not a land grabber and the land in dispute was not a grabbed land. We have not taken this as his admission but only an aspect in appreciation of oral evidence.

The Special Court is, therefore, correct in discussing the evidence on record under the caption 'design' in view of the pleading on that aspect, adverted to above and the High Court rightly upheld the same. We have already pointed out that the activity of grabbing of any land should not only be without any lawful entitlement but should also be, inter alia, with a view to illegally taking possession of such lands. These two ingredients are found against the appellant.

It is nonetheless submitted by Mr.Parasaran that the plaint mentions that the possession of the appellant partakes the character of permissive possession and this averment negates the very concept of land grabbing. It is no doubt true that if the possession is permissive then it cannot be

treated as illegal for purposes of clauses (d) and (e) of sub-section (2) of the Act. We have already discussed above with regard to the alleged plea of permissive possession and held that those averments in the plaint would not constitute plea of 'permissive possession'. In the light of the above discussion, we have no option but to sustain the view of the High Court in approving the finding of the Special Court on Issue No.6, that the appellant falls within the mischief of the definition of the expression "land grabber" under the Act.

In the result, we uphold the judgment and order of the High Court under challenge declining to interfere with the judgment and decree of the Special Court. The appeal is dismissed; the parties shall bear their own costs.

.....J. [Syed Shah Mohammed Quadri] .....J. [S.N.Phukan] January 29, 2002.