

(2010) 12 AP CK 0045

Andhra Pradesh High Court

Case No: Writ Petition No. 22822 of 2010

Deepthi Avenues Pvt. Ltd.

APPELLANT

Vs

The State of Andhra Pradesh and
Others

RESPONDENT

Date of Decision: Dec. 14, 2010

Acts Referred:

- Andhra Pradesh Escheats and Bona Vacantia Act, 1974 - Section 10, 11(1), 7, 8, 9

Citation: (2011) 1 ALD 719 : (2011) 1 ALT 588

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: E. Manohar for Kanathala Ashok Reddy, for the Appellant; N. Sridhar Reddy, Special Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

C.V. Nagarjuna Reddy, J.

Prelude:

1. A piece of land admeasuring 3000 square yards situated at Road No. 3, Banjara Hills, Hyderabad, is the subject matter of dispute in this Writ Petition. While the Petitioner claims to be the owner and possessor of the said land, which is hereinafter referred to as "the property", the Respondents claim the same as escheat and bona vacantia under the provisions of the Andhra Pradesh Escheats and Bona Vacantia Act, 1974 (for short "the Act") and possession thereof was taken after following due procedure.

The background facts:

2. The Petitioner has purchased the property admeasuring 3000 square yards, forming part of plot No. 8D under registered sale deeds from one Smt. Ameena Begum, widow of Mr. M.A. Razack, and M/s. Mohd. Abdul Aziz, Mohd. Abdul Rasheed

and Mohd. Abdul Quddus, sons of late M.A. Razack. The property is stated to bear Municipal Nos. 8 2-272/54/A, 8-2-272/57/1, 8-2-272/57/2 and 8-2-272/57/3, comprised in Survey No. 504 New (Survey No. 129 Old) and situated at Road No. 3, Banjara Hills, Hyderabad. The Petitioner has traced title to this property, which was stated to originally belong to H.E.H. the Nizam and granted to Sri Khaja Mohiuddin Ansari.

The Petitioner also narrated a legal dispute regarding the property, which eventually ended in favour of the predecessor in title of the Petitioner. The land grabbing proceedings initiated by the Government also ended against it, which firmly established that the property bearing plot No. 8D is the private property and the Government has nothing to do with it. To this extent, there is no dispute between the parties.

Action:

3. The cause for the Petitioner to file the present Writ Petition arose when the Revenue Department of the Government started claiming that the property, which is purportedly in occupation of the Petitioner and treated as plot No. 8D by it was claimed by the Revenue Department as plot No. 8C and was allegedly taken possession of. While it is the pleaded case of the Petitioner that on 10-9-2010 at about 6 pm Respondent No. 3 along with Respondent No. 4 and Police personnel went to their property, removed the Petitioner's name board and installed the board showing "this land (Plot No. 8C) is under the custody of the Tahsildar, Shaikpet Mandal, as per Section 9 of the Andhra Pradesh Escheats and Bona Vacantia Act, 1974 and tried to lock the main gate"; that as locking of the gate was not possible, it was tied with a rope; that the side gate was kept open for the ingress and egress of the Petitioner's watchman's family; and that the Petitioner's Advocate Sri K. Ashok Reddy met Respondent No. 2 in his residential office at 10-30 am on 11-9-2010 and protested against the said illegal action with a request to him to forthwith remove the board and the rope by showing the judgments of the Courts, including that of the Supreme Court. The Advocate was stated to have pleaded that plot No. 8D is wrongly shown as plot No. 8C in the board. As Respondent No. 2 did not heed to the Advocate's request, the present Writ Petition is filed.

The Respondents' stand:

4. The version of the Respondents on this aspect is, however, at variance with that of the Petitioner. According to them, the erstwhile Jubilee Hills Municipality prepared a layout of 169 plots in the Government land in Survey No. 430 of Sheikpet village and offered them for sale to various individuals, like Nobles, Nawabs and other Aristocrats during the Nizam Rule; that the Municipality existed from 1942 to 1948; that after promulgation of Sarfek has Merger Regulation 1358 Fasli, the Municipality has become defunct; that in the year 1967 the Government issued Memo bearing

No. 3933/Q.2/64-17 dated 6-12-1967 recognizing the title of allottees in respect of 50 plots as full money was paid only in respect of those plots; and that plot No. 8D admeasuring Ac.3.02 guntas was recognized in the name of one Khaja Moin Nawaj Jung @ Khaja Moinuddin Ansari. The Respondents further pleaded that plot No. 8C admeasuring Ac.2.25 guntas has been recognized in the name of Smt. Shoukatunnisa Begum w/o. Ahmed Moiuddin; that the property in dispute falls in the said plot i.e., plot No. 8C; and that in the guise of claiming plot No. 8D, the Petitioner tried to grab the property forming part of plot No. 8C, which does not belong to it. The Respondents further pleaded that the residents of Shoukath nagar slum, which has come up over the land in plot No. 8C, have represented to Respondent No. 4 that they have been staying in the said land since 30 to 40 years and that the vacant land, which has been adjacent to their residential colony admeasuring 2614 square yards, was being encroached by some unauthorized persons and requested to protect the same by taking possession of the land; that Respondent No. 4 has immediately brought this to the notice of Respondent No. 2 through his letter dated 26-7-2010 requesting him to initiate action under the Act; that after examining the case the Joint Collector, Hyderabad, Respondent No. 5 herein, directed Respondent No. 4 to take over possession of the land; and that, accordingly, after conducting panchanama on 10-8-2010 the Deputy Tahsildar (LP) of Sheikpet Mandal took possession of the land in plot No. 8C by erecting a Government sign board and Respondent No. 2 was requested to take further action. The further version of the Respondents is that the Government sign board was removed, with respect to which a complaint was lodged in Banjara Hills Police Station on 7-9-2010 and a sign board was erected to the effect that the land has been taken into custody of Respondent No. 4 as per Section 9 of the Act on 10-9-2010. Respondent No. 5, pleaded the Respondents, who is the Local Officer under the Act, has issued Notification u/s 11(1) of the Act on 13-9-2010, which was published in news papers on 14-9-2010 and was also sent for publication in District Gazette on 15-9-2010. It is the further case of the Respondents that the Petitioner has overnight constructed a compound wall by removing the Government sign board and trespassed into the property, which was in the custody of Respondent No. 4, for which a complaint was lodged on 7-9-2010 and the Government sign board was re-erected by locking the premises and sealing the gate on 10-9-2010.

Submissions:

5. At the hearing, Sri E. Manohar, learned Senior Counsel appearing for the Petitioner, advanced the following contentions:

(1) Respondent No. 5-Joint Collector, who is not the Local Officer under the Act, has neither power nor authority to take action under the Act. Even if Respondent No. 5 is the Local Officer, the purported possession is invalid as the mandatory provisions of Section 10 of the Act have not been followed as admittedly the Local Officer was not present and neither the Tahsildar nor the Deputy Tahsildar is competent to take the

property into custody.

(2) The two panchanamas dated 10-8-2010 and 12-8-2010 are brought up and self-serving and that physical possession of the property was never taken on 12-8-2010.

(3) The Petitioner's predecessor in title have succeeded in a long drawn litigation pertaining to plot No. 8D and that having failed to wrest the said property, the Respondents have mala fide sought to dispossess the Petitioner from the said property by making a false claim that the same forms part of plot No. 8C.

(4) The Petitioner is in possession of the property as evident from the Municipal door numbers and the electricity connections and that, therefore, the Respondents are bound to follow the procedure envisaged in Sections 7 and 8 of the Act, under which an enquiry shall be held by the Local Officer and if on such enquiry he is satisfied that the property is of the nature of an escheat or bona vacantia and if the person in possession resists to surrender such possession, the Local Officer is bound to institute a suit in a Court for declaration of the Government's right to the property and for recovery of possession of such property.

(5) The plea of Respondents that possession was taken u/s 9 of the Act cannot be countenanced as the procedure laid down under the said provision inapplicable only when the property is not in the possession of any person or where the person in possession surrenders such possession when demanded, and that consequently Notification dated 13-9-2010 issued u/s 11(1) of the Act is vitiated due to the procedural illegality and irregularity.

6. Resisting the above contentions of the learned Senior Counsel for the Petitioner, Sri N. Sridhar Reddy, learned Special Government Pleader attached to the office of the learned Advocate General, submitted that Respondent No. 5 is designated as the Local Officer under the Act and, therefore, he has power and jurisdiction to take action under the Act; that the property was not in possession of the Petitioner either on 10-8-2010 or 12-8-2010 when possession was taken and that it is only on 7-9-2010 that it has come to the notice of the Respondents that the Petitioner has trespassed into the property and raised a compound wall overnight by removing the Government sign board and that the Government sign board was re-erected and the premises was locked by sealing the gate on 10-9-2010. The learned Special Government Pleader further urged that the Respondents have not acted in violation of the provisions of the Act and that in the guise of enjoying plot No. 8D, the Petitioner has been trying to grab plot No. 8C.

Legal environment:

7. The relevant provisions of the Act need to be referred to and discussed before examining the respective pleas of the parties. The long title of the Act would reveal that for the determination, custody and disposal of property vested in the State of

Andhra Pradesh by escheat or lapse or bona vacantia for want of a rightful owner and of unclaimed property and formatters connected therewith, the Act was made.

8. Section 2(i) and (iv) defined "bona vacantia" and "escheat" respectively as under:

"bona vacantia" includes any property, situated in the State, of which there is no rightful owner, but does not include an escheat or any movable property found in a public place.

9. "escheat" means any property the owner of which dies intestate and without leaving legal heir.

10. Section 3 declared that all property situated in the State, which is vested in the State by escheats or lapse or as bona vacantia for want of a rightful owner, shall belong to the Government, which shall be the owner of all such property.

11. u/s 4, the general superintendence of escheats and bona vacantia shall be vested in the Board of Revenue or in such other officer or authority as may be empowered by the Government, who shall be the chief controlling authority in all matters connected with the escheats and bona vacantia.

12. Section 5 empowered the Government by notification to appoint the District Collector or such other officers as deemed fit to be the Local Officers for each district to exercise the powers and perform the functions under the Act, subject to the general control and directions of the competent authority. The Government is also empowered to appoint such number of other officers as may be necessary for the purposes of the Act to assist the Local Officer.

13. Section 7 of the Act prescribes that when the Local Officer receives information from any source that any property of the nature of an escheat or bona vacantia is situated or lying within his jurisdiction, he shall cause an enquiry to be made in respect thereof.

14. u/s 8, if the Local Officer is satisfied after enquiry that the property of the nature of an escheat or bona vacantia in the possession of a person, who has no authority to claim it and if such person resists to surrender such possession on demand, the officer may after obtaining the sanction of the competent authority, institute a suit in a Court for determination of the Government's right to the property and for recovery of possession of such property. Where the Court has declared that the property is an escheat or bona vacantia, the Local Officer shall obtain the possession thereof through the Court and manage it or dispose it of in such manner as may be prescribed.

15. Section 9 authorizes the Local Officer to take the property into his custody and arrange for its care and maintenance until the claim is settled u/s 11, where the property of the nature of an escheat or bona vacantia is not in possession of any person or where the person in possession surrenders such possession when

demanded.

16. Section 10 mandates that the Local Officer shall prepare on the site and in the presence of not less than five respectable persons of the locality an inventory of the property taken into custody u/s 9 and forthwith send a report in the prescribed form to the competent authority together with a copy of the inventory. It further provides that where such property is an immovable property, the leasehold right thereof shall be sold by public auction by such revenue authority and after following such procedure as may be prescribed and the sale proceeds shall be held in deposit, after deducting there from the expenses of the sale.

17. u/s 11, the Local Officer shall publish a notice as soon as the property is taken into custody u/s 9 in such manner as may be prescribed, calling upon the person who may have any claim to such property to prefer their claims to such property in the prescribed form within three months from the date of publication of the notice. If no claims are preferred within the said period of three months, the Local Officer shall declare the property, in respect of which the notice is published, to be an escheat or bona vacantia, as the case may be, and dispose it of in such a manner as may be prescribed. If any person prefers a claim within the said period of three months, the Local Officer shall refer the claim to the Court for its decision as to whether or not the person making the claim is entitled to the property. The Court shall thereupon after giving notice to the Local Officer and to the claimant decide the reference as if it were a suit. Where the Court decides that the property taken into custody u/s 9 or any part thereof rightfully belongs to the claimant, the Local Officer shall deliver the same to him; and where the Court decides that it does not belong to the claimant, it shall declare the property as escheat or bona vacantia, as the case may be.

18. u/s 12, as soon as the declaration is made by the Local Officer under Sub-section (2) of Section 11 or by the Court under Clause (b) of Sub-section (3) of that Section, the Local Officer shall publish a notification thereof in the A.P. Gazette in a local news paper of the district where the property is situated or lies, and shall also cause an announcement of the declaration to be made by beat of drum in the village in which the property is situated or lies.

Summation of legal provisions:

19. A careful analysis of the above provisions would reveal the underlying scheme of the Act, viz., where there is no rightful owner (bona vacantia) or the owner of the property dies intestate and without leaving legal heir (Escheat), such property is vested in the State. Before such vesting takes place, the Act provided for an elaborate procedure, which involves making enquiry, taking of possession, publication of notices and reference to the Court for declaration of property as an escheat or bona vacantia. The Act provided for two different procedures to be followed depending upon the factum of possession. As a first step, it provided for

holding an enquiry by the Local Officer on the nature of an escheat or bona vacantia (Section 7). If on such enquiry the Local Officer is satisfied that the property is an escheat or bona vacantia and in possession of a person, who has no authority to claim it, he shall institute a suit in a Court for declaration of the Government's right to the property and for recovery of possession thereof (Section 8). A different procedure is envisaged in cases where an escheat or bona vacantia is not in possession of any person or where the person in possession surrenders such possession when demanded. In such a case, the Local Officer is authorized to take possession and publish a notice calling upon the persons to prefer their claims to such property. If no such claims are preferred, he shall declare the property to be an escheat or bona vacantia and dispose of the same in the manner prescribed and where the claims are preferred, he shall refer them to the Court for its decision as to whether or not the person making the claim is entitled to the property (Sections 9 and 11).

20. The bone of contention on which there is a serious dispute in this case is which of the two procedures is appropriate in the present case and whether the procedure followed by the Respondents under Sections 9 and 11 is proper, correct and valid. Resolution of these issues depends only upon the sole factor as to whether the property was in possession of the Petitioner or it was vacant.

The facts analyses:

21. The fact that plot No. 8D is a private land over which there was a long drawn litigation which ended against the Respondents is not in dispute. The Petitioner claimed that the said property contains various house numbers referred to above, apart from electricity connections and is in their possession as its owner. As noted above, it is the specific case of the Respondents that the property, which was found vacant and taken possession of, forms part of plot No. 8C and it has nothing to do with plot No. 8D. For adjudication of the dispute involved in this case, it is not necessary for this Court to deal with the disputed question as to whether the property constitutes part of plot No. 8D or 8C and the learned senior counsel has proceeded on the assumption that the property forms part of plot No. 8C. The question then is whether the said plot was vacant when possession was purportedly taken by the Respondents.

22. Along with the counter-affidavit, the Respondents have filed two panchanamas. The first one is dated 10-8-2010 and the second one, dated 12-8-2010. Three persons, by name, K. Gopinayak, watchman and resident of Door No. 8-2-293/3, Banjara Hills; K. Raghu, security guard and resident of Door No. 1470, Madhapur; and M. Tilak Kumar, a Cooly and resident of Door No. 8-1-339/26, B.J.R. Nagar, are stated to be panchas to the panchanama dated 10-8-2010. It is stated in the said panchanama that on being summoned by the Deputy Tahsildar and Mandal Revenue Inspector, Sheikpet Mandal, they have attended the latter's office and from there "they have visited plot No. 8C, DJHM, T.S. No. 4/1/C, Block-D, Ward-10,

Road No. 3, Banjara Hills", that their enquiries revealed that over an extent of Ac.2.25 guntas belonging to Smt. Shoukatunnisa Begum w/o. Ahmed Moinuddin, a slum, by name, Shoukatnagar came into existence over a substantial part of it; that an extent of 2614 square yards of land, forming part of plot No. 8C, is found vacant; that to claim the said land the legal heirs of Smt. Shoukatunnisa Begum do not exist; and that in the absence of such persons, they have requested to treat the said property as belonging to the Government and, accordingly, they have subscribed their signatures to the panchanama voluntarily.

23. Coming to panchanama dated 12-8-2010, a perusal of which would show that M/s. S.D. Prabhudas, a Cooly and resident of Nandinagar; K. Chandrakumar, a private employee and resident of road No. 3, Banjara Hills; and K. Srihari, an electrician and resident of Shoukatnagar, are shown to be the panch witnesses.

It is stated therein that they have attended the office of the Revenue Inspector, Sheikpet Mandal on being summoned by the latter. The major part of the contents of this panchanama is a repetition of the previous panchanama except to the extent that the extent of 2614 square yards of vacant place is taken possession on the direction issued by Respondent No. 4 in exercise of his power u/s 9 of the Act and a board was erected showing the land as belonging to the Government.

24. It is interesting to note from these two panchanamas that no resident of Shoukatnagar slum has figured as a panch witness to panchanama dated 10-8-2010.

A resident of Banjara Hills (road number is not disclosed), a resident of Madhapur and a resident of B.J.R. Nagar were shown to be the panch witnesses. It is not known how these three persons, who are totally unconnected with the land and Shoukatnagar slum, have gained knowledge of the nature and details of the property and were summoned to the office of the Deputy Tahsildar and the Revenue Inspector, Sheikpet Mandal for witnessing the proposed panchanama at the property. Similarly, two of the three panch witnesses to the panchanama dated 12-8-010 are non-residents of Shoukatnagar. It is again not known as to how these panch witnesses were thought of by the Mandal Revenue Inspector, Sheikpet and summoned for preparation of a panchanama on 12-8-2010.

25. A perusal of the file produced by the learned Special Government Pleader would show that Respondent No. 4 has addressed a letter as far back as 26-7-2010, wherein it is, inter alia, stated that the slum dwellers of Shoukatnagar are complaining that one M.A. Aziz and three others were trying to grab the land forming part of plot No. 8C in the guise of occupying plot No. 8D in respect of which they had fought the litigation and succeeded and that the photographs available on the file would show that the land is in possession of the Government and a sign board in this regard is also available over the land. But, contrary to this claim of Respondent No. 4, it is stated in the panchanama dated 10-8-2010 that 2614 square yards of land, excluding Shoukatnagar slum, was remaining vacant and the three

panchas to the said panchanama have requested the Deputy Tahsildar and Mandal Revenue Inspector, Sheikpet Mandal to take over possession of the said land. In panchanama dated 12-8-2010 it is mentioned that the extent of 2614 square yards was taken possession on the direction of Tahsildar, Sheikpet Mandal by erecting a board stating that the land belongs to the Government. Thus, the contents of letter dated 26-7-2010 and the two panchanamas are self contradictory and irreconcilable to the extent of the claim relating to taking possession and erection of the board. If one believes the contents of letter dated 26-7-2010, even prior to the said date, the possession was with the Government and a board was already in existence, but the contents of panchanama dated 10-8-2010 proceeded on the premise that the land was vacant and a request was made therein to the Deputy Tahsildar and Revenue Inspector to take possession and for the first time on 12-8-2010 possession was purportedly taken and the board was erected. The Respondents have come out with a more interesting version at a later point of time. Their stand, as reflected in their counter-affidavit is that on noticing that the Petitioner highhandedly removed the Government sign board and constructed a compound wall overnight, a complaint was lodged in the Banjara Hills Police Station on 7-9-2010. This version stands contradicted by letter dated 18-8-2010 of Respondent No. 4 addressed to Respondent No. 2, which is found in the record produced by the Respondents.

26. Respondent No. 4 in the said letter has, inter alia, stated as under:

It is also submitted that the slum dwellers of Showkath Nagar and neighbouring residents complaining against the above (4) individuals and requesting to stop the illegal construction of compound wall in plot No. 8C taken up by them.

27. It is further stated in that letter that "the land to an extent of 2185 sq.mtrs was vacant on ground. The above individuals are trying to grab the said land under the guise of their documents pertaining to plot No. 8(D) by way of enclosing it with a compound wall". This letter would demonstrably prove that the compound wall was not raised overnight and that its construction was going on at least prior to 18-8-2010, while the complaint was purported to have been lodged almost three weeks after Respondent No. 4 has submitted his report to Respondent No. 2. If possession was really taken on 12-8-2010, as claimed in the panchanama bearing the said date, it is beyond one's comprehension as to how the Respondents could permit the Petitioner to enter the land and start construction of compound wall. Even assuming that the Petitioner had trespassed suddenly around 18-8-2010 and started construction of compound wall, the Respondents would not have kept quiet till 7-9-2010 without lodging a complaint.

28. If they have done so, that clearly amounted to clear dereliction of their duty in preventing the trespasser from raising the constructions over the land, which was purported to be in Government's possession. Further more, obviously to explain away the existence of compound wall, the Respondents have come out with the theory in the counter-affidavit that the Petitioner overnight constructed the

compound wall by removing the Government sign board and trespassed into the land. While, ordinarily, it is impossible for any one to raise a compound wall overnight to enclose as large a plot as admeasuring 2614 square yards, granting that the Petitioner was capable of accomplishing such a Herculean task overnight, the Respondents have failed to produce any evidence to show that they have taken the possession back by removing the Petitioner's board and re-erecting its board on 10-9-2010. Interestingly, no panchanama was claimed to have been prepared witnessing such a material event involving reclaiming of possession and re-erection of the sign board, more so, when a panchanama was purported to have been prepared on 10-8-2010 for a mere visit of the site by the Deputy Tahsildar and Mandal Revenue Inspector without taking possession.

29. Another aspect which makes the whole theory of the Respondents wholly improbable is that none of the alleged residents of the Shoukatnagar, who allegedly complained of the attempts of land grabbing, figured as panch witnesses to either of the two panchanamas dated 10-8-2010 and 12-8-2010. Five out of six witnesses, who are totally unconnected with the property, not being the residents of Shoukatnagar slum or any place in the vicinity of the slum, were specially summoned by the Deputy Tahsildar on two occasions to be the panch witnesses. There can be absolutely no reason why the persons, who complained of the alleged land grabbing, or at least those who are residents of Shoukatnagar slum were not involved as panch witnesses. The above undisputed facts would clearly expose the fallacy in the theory of the Respondents that the property was vacant and possession thereof was taken on 12-8-2010. It is not the case of the Respondents that compound wall was erected by them. On the other hand, it is the admitted case that the compound wall was erected by the Petitioner. This fact itself would support the plea of the Petitioner that it has been in possession of the property. The theory of overnight erection of compound wall stands belied by the material referred to above.

30. Whether the Respondents have followed the prescribed procedure:

As noticed from the statutory scheme, the first step towards initiating process shall commence with holding an enquiry by the local officer. The word "local officer" is defined in Section 2(vi) as the officer appointed u/s 5. Section 5 empowers the Government to appoint the District Collector or such other officer as they may deem fit to be the local officers for each District, by notification, to exercise the powers and perform the functions assigned by or under this Act subject to the general control and directions of the competent authority. u/s 4, the Board of Revenue or such officer or authority as may be empowered by the Government, who shall be the chief controlling authority in whom the general superintendence of escheats and bona vacantia shall be vested.

31. As noted above, while it is the pleaded case of the Petitioner that Respondent No. 5 has no power or authority to direct taking of possession as he is not the

designated local officer, in their counter affidavit, the Respondents have averred that Respondent No. 5 is the designated local officer. But, neither notification has been filed nor at least the details of the proceedings under which Respondent No. 5 has been designated as local officer have been given out in the counter affidavit. Be that as it may, assuming that Respondent No. 5 is the designated local officer, in the first place, he has to hold an enquiry and thereupon he can proceed either u/s 8 or Section 9, as the case maybe, depending upon the factum of possession over the land in dispute. Except letter dated 26.07.2010 addressed by Respondent No. 4 to Respondent No. 2 and the purported direction of Respondent No. 5 issued to Respondent No. 4, the Respondents have not pleaded in the counter affidavit that any enquiry, as envisaged in Section 7, has been held before proceeding u/s 9 and publishing notice u/s 11(1). In paragraph 3 of the counter, it is averred "after examining the case, the Joint Collector, Hyderabad, directed the Tahsildar to take over possession of the land". Mere examination of the case, as pleaded by the Respondents, does not satisfy the requirements of Section 7, as the said provision contemplates an "enquiry" to be made. The obvious purpose of such enquiry is to determine the status of the property and whether the property is in possession of any one or vacant so as to enable the local officer to decide as to which are the two procedures envisaged u/s 8 and Section 9 read with Section 11 to be followed.

32. In my considered view, failure to undertake this mandatory procedure by Respondent No. 5 vitiated all further steps taken by his subordinate officers.

33. There is yet another serious statutory violation committed by the Respondents in purportedly taking the property into their custody. Even if the Respondents had justification to proceed u/s 9 instead of u/s 8, it is the local officer, who shall take the property into his custody and arrange for its care and maintenance until the claim is settled u/s 11. No provision under the Act or the Andhra Pradesh Escheats and Bona Vacantia Rules, 1975 or any other statutory provision has been brought to my notice by the learned Special Government Pleader that the powers and functions of the local officer have been delegated to any of his subordinate officers. It is not the Respondents' pleaded case that Respondent No. 5, who is stated to be the local officer, has ever visited the property in question. Even if the contents of the two panchanamas, referred to above, are taken on their face value, they disclose that both on 10.08.2010 and 12.08.2010 it was only the Deputy Tahsildar, Sheikpet Mandal, Hyderabad, who visited the property along with the panch witnesses and that the land was taken possession on the direction of Respondent No. 4 i.e., the Tahsildar, Sheikpet, issued in exercise of his power u/s 9 of the Act. Interestingly, panchanama dated 12-8-2010 has not referred any order of Respondent No. 5, who is stated to be the local officer, for taking possession. While neither Respondent No. 4 nor the Deputy Tahsildar is the local officer, neither of them has any power or authority to take possession even if the property was found to be vacant. Section 9 of the Act in unequivocal terms authorized only the local officer to take the property into his custody and arrange for its care and maintenance until the claim is settled

u/s 11.

34. Where a statute declares a particular thing to be done in a particular manner, it must be done in that manner or not at all See: [Gujarat Electricity Board Vs. Girdharlal Motilal and Another](#), [Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.](#), and [Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others](#),

35. On the admitted facts of this case, Respondent No. 5, who is pleaded to be the local officer, has not taken the property into his custody and therefore even if the contents of the panchanama dated 12.08.2010 are accepted as correct, the purported taking of possession by the Deputy Tahsildar is in blatant infraction of the mandatory statutory procedure prescribed by the Act. Such taking of possession even if true, does not pass muster and is illegal and invalid.

Conclusion:

36. What are the consequences of the findings rendered hereinabove remain to be considered.

37. If the property is in possession of a person, who has no authority to claim it, the local officer shall institute a suit in a Court for declaration of the Government's right to the property and for recovery of possession of such property. This procedure is in contrast with the one prescribed under Section 11 where in respect of the property, which was found vacant and taken into custody by the local officer, if any person prefers a claim within the prescribed period, the same shall be referred as to whether or not the person making the claim is entitled to the property. While in both the events, it is the Court of competent jurisdiction, which is to adjudicate on the dispute relating to the right over the property, the burden of proof varies in each of these events. u/s 8, the initial burden is on the Government to establish its right while it is converse in case of Section 9.

38. In the light of the findings and conclusions drawn hereinabove that the purported act of taking the property into custody is not valid, the notification issued u/s 11(1) stands nullified and Respondent No. 5 shall recommence the proceedings from the stage of Section 7 by holding an enquiry after due notice to the Petitioner and affording it an opportunity of being heard in the enquiry. If, after enquiry, Respondent No. 5 is satisfied that the property is an escheat or a bona vacantia, he shall pass an appropriate order and proceed either u/s 8 or Section 9 depending upon his finding as to whether the property is vacant or in possession of the Petitioner. The decision so taken shall be communicated to the Petitioner before proceeding further. Till this exercise is completed, the order of status quo granted by this Court during the pendency of the Writ Petition shall be continued. Epilogue:

39. The facts of this case unravel a rather overzealous attitude on the part of the revenue officials involved in the case. This Court has no hesitation to hold that in

their anxiety to outwit the Petitioner and overreach the statutory procedure, the Respondents have gone to the extent of fabricating two panchanamas with concocted versions. While it is absolutely necessary for the executive apparatus to zealously guard the public properties, they shall not overstep their power and authority by indulging in unethical acts of creating material solely with a view to defeat the claims of a citizen. By indulging in such acts, they not only lose the confidence of people, but also mislead the Courts. Such conduct on the part of the public functionaries is reprehensible and liable to be denounced in the strongest possible terms. As this Court is fully convinced that the Respondents have come out with a blatantly false claim that possession was taken on 12.08.2010 and that the Petitioner has unlawfully entered the land thereafter by erecting a compound wall overnight, they are saddled with costs of Rs. 25,000/-, which shall be paid to the Andhra Pradesh High Court Legal Service Authority within a period of four weeks from today. The District Collector, who shall pay this amount at the first instance, shall identify the officers responsible and recover the same from them after following due procedure.

40. Subject to the above directions, the Writ Petition is allowed.