IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1430 OF 2019

Union of India,]
Through the Deputy Salt Commissioner,] ..Appellant/
Ballard Estate, Mumbai – 400001.] Org. Plaintiff

Versus

1. The Estate Investment Company Pvt. Ltd.]
   Sakseria Chambers, Fort, Mumbai-1.]
2. M/s Mira Salt Work Company,]
   Lalji Mansion, Lohar Chawl,]
   Mumbai-400001.]
3. The State of Maharashtra]
4. The Collector of Thane]
5. The Additional Commissioner,]..Respondents
   Konkan Division, Mumbai]Org.Defendants

Mr. Anil C. Singh, Additional Solicitor General with Mr. Aditya Thakkar, Ms. Savita Ganoo, Mr. Ameya Mahadik, Mr. Siddha Pamecha, Ms. Simantini Mohite, Mr. Ashish Mehta, Mr. Adarsh Vyass, Mr. Rama Gupta, Mr. Rajdutt Nagre and Mr. Krishnakant Deshmukh, Advocates for the Appellant-Original Plaintiff.

Mr. Girish Godbole, Senior Advocate, with Mr. Saurabh Kirpal, Senior Advocate, Mr. Jaydeep Oza and Mr. Mustafa Nulwala, i/by Ms. Tabbassum Achhan, Advocates for Respondent No.1.

Mr. Aspi Chinoy, Senior Advocate, with Mr. Yohaan Shah, Ms.Rujuta Patil, Mr. Hasan Mushabber and Adv. Divishada Desai, Advocates, i/by Negandhi Shah & Hidayatullah, for Respondent No.2.

Mr. A.R. Patil, Additional Government Pleader for Respondent Nos.3 to 5-State of Maharashtra.

CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.

Judgment is reserved on : 13th February 2026.

Judgment is pronounced on : 30th April 2026.

PER, GAUTAM A. ANKHAD, J.

This First Appeal assails the judgment dated 13th April 2018 passed by the learned 7th Joint Civil Judge, Senior Division, Thane, whereby Special Civil Suit no.771 of 2011 filed by the appellant seeking declaration of its title over a piece of land comprised under Mira, Manek/Shapur Salt Works, at village Bhayander, district Thane has been dismissed ("impugned judgment").

2. The appellant filed the suit seeking the following reliefs:

> *"(A) It be declared by this Hon'ble Court that the plaintiffs are owners of the suit lands bearing Survey Nos. schedule A covered by Mira, Manek/Shapur Salt Works, village Bhayander, District Thane and that the defendants have no right, title or interest in the same;*
>
> *(A)(1) The plaintiffs be granted leave U/s. 80(2) of CPC to file this suit before expiry of statutory period of two months after service of the same upon defendant nos.3 to 5;*
>
> *(B) The orders passed by the Collector dated 18th November 2002 in Application No.4 of 1999 filed by the defendant no.2 under section 20 MLRC, 1966 dated 8th October 2010 passed by defendant no.5 in Appeal Nos.38 and 97 of 2003 and Appeal No.133 of 2008 as also the order passed by the Collector dated 5th September 2008 under the provisions of Salsette Estates Abolition of Land Revenue Exemption Act, 1951 be set aside;*
>
> *(C) The defendant nos.1 and 2 be directed to decreed and order to hand over vacant and peaceful possession of the suit land bearing survey nos. as per schedule A covered by Mira, Manek/Shapur Salt Works, village Bhayander, District Thane;*
>
> *(D) The defendants by themselves, their agents and servants be restrained by a permanent order of injunction of this Hon'ble Court from transferring, alienating or creating any third-party interest in the suit land and from using the same for any purposes other than salt manufacture and for doing any construction work on the same and from developing it;*
>
> *(E) For interim and ad-interim relief in terms of prayer clause/s above;*

(F) *The defendants be decreed, directed and ordered to pay sum of Rs.2,078=00 towards damages as mentioned in the particulars of the plaint;*

(G) *This Hon'ble Court be pleased to direct enquiry into mesne profit earned by the defendants as per the provisions of Order 20 Rule 11 of C.P.C.;*

(H) *For costs of this suit;*

(I) *For such other and further reliefs, as this Hon'ble Court deems fit and proper be granted."*

3. On 21st July 2012, respondent nos.1 and 2 filed their written statements opposing the suit on several grounds. Respondent nos.3 to 5 did not file any written statement. The following issues were framed by the trial Court on 25th June 2013 and answered as under:

Sr.No.	*Issues*	*Findings*
1.	*Whether plaintiff proves that it is the owner of the suit property?*	*No*
2.	*Whether the suit is maintainable?*	*No*
3.	*Whether this Court has jurisdiction to try and entertain the suit?*	*No*
4.	*Whether the suit is within limitation?*	*Yes*
5.	*Whether the suit is barred by principle of res-judicata?*	*No*
6.	*Is the plaintiff entitled to possession of suit property?*	*No*
7	*Is the plaintiff entitled to relief claimed as prayed for?*	*No*
8	*What order?*	*No*

4. The appellant led evidence of Mr. Harikrishna Agarwal, the then Assistant Salt Commissioner (PW-1), in an endeavour to prove its case on title to the suit lands. Respondent nos.1 and 2 also led documentary and oral evidence of one witness each. Respondent nos.3 to 5 did

not lead any evidence nor cross-examined any of the witnesses who had tendered evidence in the matter, on behalf of the other parties. After considering the evidence on record, the trial Court dismissed the suit *inter alia* holding as follows:

> *"17. It is admitted position that prior to this suit many legal proceeding were initiated in respect of the suit property. Those are;*
>
> *1) Appeal No.133/08 filed by defendant no.1 challenging the order dtd 07/08/1992 passed by SDO directing to delete the name of defendant no.1 from the other rights column in the Mutation Entry No.4996 dtd. 28/01/1989.*
>
> *2) Appeal No.14/1983 in which the Additional Collector directing to enter the name of plaintiff as holder of the suit property and to enter the name of defendant no.1 in the other rights column.*
>
> *3) Appeal No.9/1993 before the Collector for deleting the name of defendant no.1 from the record of rights.*
>
> *4) Writ Petition No.2861/1983 filed by defendant no.2 challenging the notice dtd. 16/07/1983.*
>
> *5) W.P. No.2333/1983 directing the plaintiffs to renew the license without insisting upon requirement to execute lease.*
>
> *6) Special Leave Petition No.14528 of 1998 / Civil Appeal No.3055/1999 challenging the order passed in Civil Appeal No.6743/1996 filed by the plaintiff against the Gajanan Laxman Desai.*
>
> *7) RTS Application No.4/1999 before the District Collector, Thane U/s. 20 of M.L.R.C. (Maharashtra Land Revenue Code) 1966.*
>
> *8) Appeal No.38/03 filed by defendant no.2 against the order passed by the Collector dtd. 18/11/2002.*
>
> *9) Appeal No.97/03 filed by the Plaintiff against the State of Maharashtra and defendant no.2.*
>
> *18. It is also admitted position that defendant no.2 has purchased the suit property by various 95 sale deeds from the occupants of the suit property. Those sale deeds were executed in between 07/05/1928 to 15/06/1951. It is also not in dispute that at the time of execution of those sale deeds, those lands were the agricultural lands and was forming the part of Eksali land under the Indenture of 1870*
>
> *.....*

24. *Defendant no.1 was in use and in occupation of the suit property. Defendant no.1 is declared as a land holder as per the notification (Exh.267) issued after the enactment of B.T. and A.L. Act, 1948. Further by the notification (Exh.267) the Government of Bombay assumed the management of the Estate under the indenture of lease U/s. 44 of the B.T. & A.L. Act. The management assumed was thereafter terminated by the notification (Exh.260) on 01/10/1957 issued by the Governor of Bombay in the Bombay Government Gazette which shows that till the issuance of the notification defendant no.1 was in control and management of the Estate and was exercising the rights acquired under the Assignment Deeds of 1945. The Government of India has come into existence in 1937. On 23/03/1938 the letter (Exh.191) was written by the then Collector Salt Revenue to the Collector of Thane in which the partition of Mira Salt Works was proposed. By the letter (Exh.191) request was made for the inclusion of additional land belonging to the Government in the salt work. Therefore it itself shows that if the suit property was vested in the Federal Government then the powers to grant the permission was not addressed to the Collector, Thane. Section 172 of the Government of India Act provides that "All lands and buildings which immediately before the commencement of part III of this act were vested in His Majesty for the purpose of Government of India as from that date". The notification (Exh.192) is produced by the plaintiff in which the schedule of the lands and building for federal purpose is given. The suit property is not included in the said Schedule. The plaintiff also failed to produce any document to show that the suit property was held for Federal purpose. In the judgment (Exh.262) passed in Civil Appeal No.288 of 1956 it is mentioned that, "Relying on those provisions it was urged that by reason of assumption of management of the lands in dispute under Section 44 of B.T. & A.L. Act, the lands had become vested in the State Government and the Plaintif11 ptf (i.e. Defendant No.1 herein) has no interest left therein."*

25. *In the Judgment (Exh.262) passed in Civil Appeal No.288/1956, the State Government given an admission that the land belongs to defendant no.1 and only on the basis of Notification under Section 44 of B.T. & A.L. Act, the lands had become vested in the State Government. The statement of the State Government shows that the plaintiff was never the owner of the suit property. Moreover defendant no.1 has filed the suit bearing no.123/1955, 288/1972, 244/1978 for the account of the management in which the decrees for the accounts were passed and those decrees were confirmed even up to the Hon'ble Apex Court.*

26. *As per direction of the Hon'ble Apex court dtd. 18/11/2002, the Collector in the Application No.4/1999 passed the order*

in pursuance to the proceeding U/s. 20 of the Maharashtra Land Revenue Code for the declaration of the title of the suit property. The plaintiff was also the party in the said proceeding. In the said proceeding the collector held that neither defendant no.2 nor the plaintiff were the owners but the Collector held defendant no.3 i.e. State Government was the owner of the suit property. The order of Collector was challenged by defendant no.2 and also by the plaintiff in the Appeal No.38/03 and 97/03 respectively before the Konkan Division Bombay. In those proceeding defendant no.1 was allowed to participate in respect of his appeal (RTS No.133/08). All the three appeals were disposed of by the order (Exh.75) by which the Commissioner, Konkan Division Bombay set aside the order passed in the Original Application No.4/1999. Appeal No.133/08 was also allowed by which all the adverse orders passed against defendant no.1 by the Revenue Authorities were set aside and Appeal No.97 of 03 filed by the plaintiff was dismissed. By the order defendant no.1 was declared as the owner of the suit property and defendant no.2 was held as a tenant for manufacture of the salt. The collector also in the proceeding U/s. 3 of Salsette Act accepting the claim of defendant no.1 and passed the Order (Exh.76) by which the Tahsildar was directed to enter the name of defendant no.1 as land holder i.e. superior holder in Kabjedar column. The order (Exh.76) was confirmed in writ petition by the Order (Exh.77) dtd. 14/07/2011. The Order (Exh.77) was challenged in the Letter Patent Appeal. However the said appeal was dismissed on 12/10/2011. The order of the Collector was confirmed by the Hon'ble Apex Court in Special Leave to Appeal (Exh.79) by the Order dtd. 28/11/2011. The plaintiff and the Salt Department have never intervened inspite of the fact that the name of defendant no.1 was ordered to enter in the record of rights as superior holder from 1951. Not only this the original grantee i.e. Ramchandra Laxmanji was also referred to as the Superior Holder by the Chief Secretary of the British Government in the Order (Exh.182) dtd. 03/03/1869. License No.48(Exh.220) was issued to defendant no.2 for Manek Mira Salt Works by the salt department. While issuing the license, the provisions of relinquishment of right of occupation was deleted and it was substituted that the Collector may in consultation with the Collector of Central Excise and Salt Revenue, grant permission for the use of such land for such purpose subject to payment of non-agricultural assessment leviable on the land and to such further conditions as the Collector may, subject to the general or special orders of the State Government, impose. Therefore defendant no.2 by the letter (Exh.234) pointed out that this condition was not applicable to Manek Mira Salt Works. The license to run Manek Mira Salt Works expired on 20/6/1983 and thereafter the Deputy Salt Commissioner Bombay issued the notice (Exh.235) to defendant no.2 in

which it is mentioned that the said salt works stands on the Central Government lands and held by defendant no.2 on license. Defendant No.2 challenged the notice in the Writ Petition No.2861 of 1983 filed against the Plaintiff in which defendant no.2 also prayed for the grant and renewal the license of Manek Mira Salt Works by the order passed in the said writ petition. The Hon'ble High Court grant interim license in favour of defendant no.2 and the notice (Exh.235) was set aside. Thereafter the plaintiff filed C.A. No.3055/99 against the said order in the Supreme Court. The Hon'ble Supreme Court passed the order and directed defendant no.2 to approach the Collector, Thane for deciding the title of the lands use for manufacture of the salt. Defendant no.2 filed the petition U/s. 20 of Maharashtra Land Revenue Code for declaring him as an owner of the suit property which was decided by the Order (Exh.62).

27. *The plaintiff witness Hari Krishna admitted that the land s purchased by defendant no.2 at Exh. 83 to 181 are the private lands and the plaintiff has not raised any objection in that regard. Further it was also admitted by him that the land of Manek Salt Works was privately owned and occupied by defendant no.2. He also admitted that the Shapur Salt Works and Manek Salt Works were formed as per the sanction given by the Collector of Salt Revenue. Thus the contention of ownership was contradicted by the plaintiff's own witness.*

28. *To sum up, since 1866 Late Ramchandra Laxmanji and his successors which also include defendant nos.1 and 2 are in possession of the suit property. The plaintiff has not filed any notification on the record to show that the suit property is belonging to Federal Government. Defendant no.2 is in possession of the suit property. The provisions of Government of India Act, 1935 are not applicable to the Indenture of Lease. In such circumstances, in view of the above discussion there is nothing on the record to show that the suit property belongs to the Federal Government and by which the plaintiff can claim ownership on it. Therefore, the plaintiff has failed to prove his ownership over the suit property and they are certainly not entitled to claim the consequential relief of claiming the possession of the suit property. Hence, the plaintiff is also not entitled for the possession of the suit property. Accordingly, I answer Issue no.1 and 6 in the negative."*

Brief history and relevant facts of the case

5. Before recording the arguments advanced by the parties, having regard to the chequered history of the matter, the relevant facts are briefly summarised as follows:

(a) By an Indenture dated 7th November 1870 ("the Indenture"), the Secretary of State for India in Council granted and demised to Ramchunder Luxumonjee, his heirs, executors and administrators ("the Grantee") for 999 years, the villages of Bhayander, Ghodbunder and Mira, admeasuring approximately 3,688 acres, comprising lands of tenures of Inam, Sooti, Wurkus, Assessed Sweet Batty, Assessed Eksali and Khajun lands, subject to payment of an annual rent of Rs.6,791 and 9 Annas and 6 Pies per annum payable in two equal instalments on 15th December and 15th April in each year. The Indenture *inter alia* permitted the Grantee to assign the lands or any part thereof, upon notice to the Collector or other revenue authorities. In respect of lands other than Khajun lands, the Grantee was also vested with the right to recover land revenue and to forfeit occupancy in the event of default.

(b) The present suit concerns the Eksali lands, which is a smaller portion of lands approximately 220/227 acres out of the larger land parcel of 3,688 acres. The Indenture also contained various other covenants and obligations binding upon the Grantee.

(c) On 1st April 1937, the Government of India Act, 1935 ("1935 GOI Act") came into force. On 16th July 1938, a notification was issued under section 172(1)(a) of the said Act, certifying the lands and buildings

that vested in His Majesty for the purposes of the Government of India and which were retained by the Governor General in Council for future use. The Schedule annexed to the notification enumerates lands and buildings used by the Bombay Salt Department. Significantly, the suit lands do not find mention in the said Schedule.

(d) In 1945, respondent no.1 acquired the rights, title and interest of the Grantee under two Deeds of Assignment dated 22nd March 1945 and 5th April 1945.

(e) Around 1945, certain disputes arose between respondent no.1 and the predecessors-in-title of respondent no.2 (at that time - Shapurji Manekji Kotwal & Sons), resulting in respondent no.1 filing Special Civil Suit no.58 of 1945 before the Civil Judge, Senior Division, Thane. Respondent no.1 *inter alia* sought a declaration that the predecessors-in-title of respondent no.2 had no right to hold the lands in derogation of respondent no.1's rights. Along with reliefs of eviction, respondent no.1 sought recovery of rent and damages. The suit was partly decreed on 25th February 1947. The Court held that nothing in Rule 76 framed under the Bombay Land Revenue Code, 1921 ("1921 BLRC") deprived respondent no.1, as a superior holder of its right to recover the 1/3rd share of paddy from the defendants therein. The Court further held that the defendants' contention that the

remedy of the plaintiff lay against the Government of India and that it was a necessary party to the suit could not be accepted as there was no contractual relationship between the plaintiff and the Government regarding payment of rent nor any privity of estate. Appeal no.236 of 1947 preferred by respondent no.1 against the said judgment was dismissed by a Division Bench of this Court on 12th July 1950.

(f) On 19th December 1949, the Government of Bombay (Revenue Department), in exercise of powers under Section 2(9) of the Bombay Tenancy and Agricultural Lands Act, 1948 ("BTAL Act"), issued a notification declaring respondent no.1 as the "land-holder" of the suit lands covered by the Indenture. By a further notification also dated 19th December 1949 issued under Section 44 of the BTAL Act, the State Government took over possession and assumed management of respondent no.1/the landholder's estate. Subsequently, by a notification dated 1st October 1957, this action was reversed by the State Government.

(g) Meanwhile in 1951, the State Government enacted the Salsette Estates (Land Revenue Exemption Abolition) Act, 1951 ("Salsette Act") to abolish the exemption from land revenue enjoyed by holders of certain estates situated in villages specified in the Schedule thereto. The Schedule included the villages of Bhayander, Mira and Ghodbunder where

the suit lands are situated. By virtue of the said enactment, the State Government now exercised dominion over the suit lands and subjected them to the general regime of land revenue.

(h) In 1955, respondent no.1 instituted Suit no.123 of 1955 against respondent no.3 (then State of Bombay) before the Civil Judge Senior Division, Thane, seeking accounts of the income derived from the estate during the period the State Government had assumed management under Section 44 of the BTAL Act. After a contest, a preliminary decree for accounts was passed in favour of respondent no.1. On 14th September 1956, the State Government filed Civil Appeal no.288 of 1956, which was dismissed on 14th December 1957. A final decree was thereafter passed. Appeal no.95 of 1977 and Second Appeal no.784 of 1980 filed by the State Government were dismissed on 13th February 1980 and 27th January 1988 respectively. In the order dismissing the Second Appeal, a learned Single Judge of this Court rejected the State's reliance on the Salsette Act and held that Salsette Act merely altered the legal status of the transferees of Ramchunder Luxumonjee from sanad-holders to owners and it did not affect respondent no.1's suit claim arising from wrongful dispossession.

(i) A Special Leave Petition no.11883 of 1988 filed by the State Government was dismissed by the Hon'ble

Supreme Court on 3rd November 1988. This concluded the litigation between the State Government and respondent no.1 which had commenced in 1955 due to the action of the State Government of taking over possession and management of respondent no.1 under section 44 of the BTAL Act.

(j) On 16th July 1983, the Salt Department of the Union of India, for the first time, issued a notice to respondent no.2 requiring it to execute a lease in respect of its lands under Rule 76 of the provisions of 1921 BLRC as a condition precedent for renewal of Salt Licence no.48 which was issued in 1950. Respondent no.2 challenged the said notice by filing Writ Petition no.2861 of 1983 before this Court. Similar notices issued to other salt manufacturers were also challenged in separate writ petitions. In all these matters, on 23rd June 1993, the High Court directed the appellant to renew the salt licences without requiring the manufacturers to surrender or cede their title in respect of the lands. On 25th March 1996, a batch of connected Special Leave Petitions preferred by the appellant against the High Court order dated 23rd June 1993 were dismissed by the Hon'ble Supreme Court. While doing so, the Hon'ble Supreme Court directed respondents therein to approach the Collector/ District Magistrate for determining the issue of title within a period of six months from the date of the order. The

order dated 25th March 1996 of the Hon'ble Supreme Court is quoted:

> *"Leave granted.*
>
> *We have heard the learned counsel on both sides.*
>
> *In the appeal arising out of SLP no.15356 of 1992 dated 26th February 1996, the Division Bench of the High Court in Writ Petition no.2333 of 1983 by order dated 29th July 1991 directed that the Union of India cannot insist upon the respondents conceding to the title of the Government. It directed the Union of India to renew the licence without insisting upon conceding the title of the Union of India. In the appeal, this Court had held that for obtaining licence/renewal, title to the property or a lease from the owner is a pre-condition. In that case, the Deputy Collector had held that the respondent had title to the property and appeal thereon was pending. Accordingly, this Court had directed the Union of India to grant renewal of the licence pending decision on title.*
>
> *In these cases, admittedly, no decision on title has yet been given by any authority. The respondents are directed to file their claims before the competent authority (Collector/ District Magistrate, as the case may be) within one month from today either as an owner or a lessee from the owner. The competent authority is directed to issue notice to the Central Government and after considering the material and affording an opportunity of hearing and after taking into consideration the law on vesting, dispose of all those applications on title. Subject to the result therein, the licenses under the Salt Act would be issued/ renewed. Pending decision, the Union of India are directed to grant renewal. The authority is directed to dispose of those matters within a period of six months from the date of the receipt of the copy of the order.*
>
> *The appeals are accordingly disposed of. No costs."*

(k) On 12th May 1999, the appellant's Special Leave Petition no. 14528 of 1998 impugning the High Court order dated 23rd June 1993 in Writ Petition no. 2861 of 1983 was also dismissed in terms of its order dated 25th March 1996 quoted above.

(l) In view of the aforesaid orders passed by the Hon'ble Supreme Court, the appellant and respondent no.2 filed Revenue Tenancy Settlement

(RTS) Applications before the Collector–respondent no.4. Both these applications were dismissed by respondent no.4 by an order dated 18th November 2002 and it was held that the suit lands were owned by respondent no.3-State of Maharashtra. Being aggrieved, both sides preferred appeals[1] before respondent no.5-the Additional Commissioner, Konkan Division, Mumbai. Respondent no.1 being a Grantee, was also permitted to intervene in the appeals filed by the appellant and respondent no.2. In the meantime, respondent nos.1 and 2 amicably settled their disputes as per the Consent Terms dated 15th September 2009 filed in Suit no.12 of 2003.

(m) By a common order dated 8th October 2010, the appeals filed by the appellant were dismissed and the appeals preferred by respondent nos.1 and 2 were allowed. The order dated 18th November 2002 passed by respondent no.4 was set aside and it was held that the appellant had no right, title, or interest in the suit lands. It was further held that respondent nos.1 and 2 had their respective title as owner and tenant of the suit lands, as elaborately set out in Annexure "A" to the said order. Accordingly, respondent no.5 directed mutation of the names of respondent nos.1 and 2 in the Record of Rights and ordered deletion of the appellant's name therefrom. The operative part of the said

[1] *The appellant filed RTS Appeal no.97 of 2003, respondent no.1 filed RTS Appeal no.133 of 2003 and respondent no.2 filed RTS Appeal no.38 of 2003.*

order reads as under:-

"ORDERS

1. *Appeal No.38 of 2003 by Mira is allowed and impugned judgment and Order dated 18.11.2002 in Application No.4 of 1999 is set aside. The Appeal of Union Government numbered Appeal No.97 of 2003 is hereby dismissed.*

2. *Appeal No.133 of 2008 is allowed and impugned judgments/orders dated 7/8/1992 in Suo Moto Revision passed by SDO setting aside ME No 4996 and Order dated 3.9.1998 in Revision Application No.62 of 1994 both passed by SDO and the Order dated 17.7.2007 passed by Deputy Collector in Appeal No.9 of 1993 & 86 of 1998 are all hereby quashed and set aside.*

3. *Title of disputed land vests with Estate to the extent of land described in the schedule annexed as Exh A to the Consent Terms dated 15th September, 2009 in Suit 12/2003 and Mira is its the Tenant in respect of the land as described in Schedule "A" hereto.*

4. *As for remaining lands out of about 224 acre of the disputed lands, the lands bearing (I) S. Nos 607/6, 608/3, 609/5, 610/5 & 611/2 admeasuring in all 14 acres 22 ¼ gunthas, (ii) S. Nos 612, 613, 614, 615 (part) & 616 adm in all 27 acres & 10 ½ gunthas all of village Bhayander and land bearing (iii) S No 192 (part) of village Mira adm 17 ¼ guntha and (iv) S. No 614/1 adm 1 acre and 617 (part) both of village Bhayendar are concerned, for reasons stated in Para 15 of Mira submissions not controverted by Estate the title of these lands, vests with Mira as Owner thereof. The name of Mira be recorded in the holder column.*

5. *In view of decision on title as aforesaid fresh Mutation Entry be recorded giving effect to this order and that the name of Salt-Department stands deleted.*

6. *In the circumstances, there shall be no order as to costs.*

7. *The concerned authorities not to make mutation entries in terms of this order for a period of four weeks."*

(n) Meanwhile, a separate set of proceedings under section 3 of the Salsette Act were independently initiated by respondent no.4 to ascertain the extent of land which, on the appointed date of the said Act was covered by section 3(1)(b)(i) and for which the

estate-holder was liable for payment of land revenue to respondent no.3. In the said proceedings before respondent no.4, certain third parties were claiming that non-agricultural user permission had been granted in their favour by respondent no.4. These permissions were challenged by respondent no.1 claiming that the said lands cannot be subjected to non-agricultural use without the consent of respondent no.1. The appellant was not a party to these proceedings. On 5th September 2008, respondent no.4 passed an order under Section 3 of the Salsette Act *inter alia* setting aside the permissions in favour of such third parties and holding that respondent no.1 is the superior holder/ landholder in respect of the suit lands and the Tehsildar was directed to accordingly make entries in the revenue records and the Record of Rights. The relevant portion of the said order is extracted:

"CONCLUSION:-

As seen from the records, the village Bhayander was split into four villages namely Bhayander, Navghar, Goddev and Khari and village Mire was split into three villages namely Mire, Penkarpada and Mahajanwadi whereas Ghodbunder village continues to remain a single village. The Company have produced the list of the corresponding survey numbers-and hissa numbers of all eksali / tenanted lands as per the new villages as above which is at Exhibit "A" to the Written Submission dated 29.07.2008 by the Company. Similarly, in respect of the land where whole of the survey numbers is concerned, the rights of the Company whereof were released or agreed to be released, the Company have furnished the list thereof in Exhibit B, reproducing the relevant survey numbers and hissa numbers as per new villages names. Likewise in respect of survey nos. And Hissa Nos. As per new village names, out of which part of the area Exhibit "B" & "C" there from would be appropriate. In the result I pass the following Order:

ORDER

I) The claim of the M/s. The Estate Investment Co. Pvt. Ltd. is accepted.

II) The Tahsildar Thane is directed to record the name of company M/s. The Estate Investment Company Pvt. Ltd. as Land holder / superior holder in kabjedar column of V.F. No.VII/XII above the line and the Names which are appearing today should be retained below the line in respect of the Eksali Tenure/Tenanted lands as shown in Exh. "A" as tenants excluding the lands shown in the Exh. 'B' & 'C' (as was done earlier by Mutation Entry No.859 of Bhayander, 304 of Ghodbunder, and 310 of Mire Village).

III) The Tahsildar Thane is further directed that in other rights column note should be taken for entitlement of land holder / superior holder M/s. The Estate Investment Co. Pvt. Ltd. to receive rent as per law.

IV) No order as to costs.

V) The concerned parties be informed of this decision accordingly."

(o) The aggrieved third parties were objecting to the alterations in the revenue record on the ground that they have a right in some of the suit lands and challenged the Collector's order dated 5th September 2008 in Writ Petition no.7500 of 2008 before this Court, which was dismissed by the learned Single Judge on 14th/15th July 2011 granting the third parties liberty to approach the Civil Court to challenge the alteration and for adjudication of their rights. Further appeals by the third parties before the Division Bench of this Court and Special Leave to Appeal before the Hon'ble Supreme Court of India were also dismissed[2]. Thus, the order dated 5th September 2008 passed by respondent no.4 declaring respondent no.1 as the superior holder under Section 3 of the Salsette Act attained finality.

[2] *The appellant's Letters Patent Appeal no.264 of 2011 was dismissed by a Division Bench of this Court on 11th October 2011 and the appellant's Special Leave to Appeal no.30804 of 2011 was dismissed on 8th December 2011.*

Respondent Nos. 1 and 2 have referred to them solely as part of the factual narrative to demonstrate that the issue of title to the suit lands has consistently been contested by the State and/or third parties, and never by the appellant.

6. It is in the backdrop of the aforesaid documents, legislative framework and judicial orders, that the appellant had instituted the present suit claiming title to the suit lands, which has been dismissed by the impugned judgment.

Main issues in this Appeal

7. The main issues which arise in this Appeal from the impugned judgment are as under:

(i) Whether the appellant continued to be the owner of the suit lands after the execution of the Indenture of 1870 and upon the enactment of the 1935 GOI Act?

(ii) Whether the trial Court has correctly held that the appellant has failed to establish its title and ownership to the suit lands?; and

(iii) Whether the impugned judgment ought to be set aside as prayer (b) in the suit is not dealt with by the trial Court?

Submissions of the appellant:

8. Mr. Anil Singh, the learned ASG submitted that the trial Court erred in holding that the appellant is not the

owner of the suit lands. It was contended that the Indenture of 1870 did not convey the ownership or the title to Ramchunder Luxumonjee and the same continues with the appellant. The learned ASG submitted that the trial Court did not correctly analyze the clauses of the document. The Indenture is a limited grant as evident from the use of the expression "demise" in the document. The Indenture did not transfer the title and ownership and the then government retained substantial rights, including the rights of re-entry and repossession. The learned ASG relied upon page 549 of the Gazetteer of Bombay Presidency Volume XIII Part II, Thane publication no.B-472 of the year 1882 where it is recorded that Indenture was a lease for 999 years and the estates were granted to the Grantee, because the villagers refused to keep the large Bhayander embankment in repair.

9. The learned ASG contended that once it is established that even after the Indenture of 1870 the predecessor in title of the appellant was the owner of the suit lands, the only question was how and in what manner the then Government of India stood divested of its title to the suit lands. That burden lies solely on respondent nos. 1 and 2, which it has failed to discharge. The learned ASG submitted that sections 2 and 3 of the Government Grants Act, 1895 specifically provides that the Transfer of Property Act, 1882 shall not apply to any grant made before the said Act and that grant would have to be considered on its own tenor. Reliance was placed upon the judgment in *"Union Of India*

& Anr vs Dinshaw Shapoorji Anklesari"[3] to submit that by virtue of sections 2 and 3 of the Government Grants Act 1895, the Transfer of Property Act, 1882 shall not be applicable to the government grants.

10. Without prejudice to the above, it was submitted that the right conferred under the Indenture could only be that of a "Khot". Reliance was placed upon the decision in *Tajubai kom Daudkhan Jangalkhan v. The Sub-Collector of Kulaba"*[4] wherein it was held that Khots were not proprietors of land, but only possessed hereditary rights to farm it. The learned ASG relied upon Rule 30-C of the 1921 BLRC to contend that all grants or disposal of government lands only involve transfer of rights to use or occupation of such lands and does not involve a transfer of proprietary rights of the Government in the soil. The mere use of the nomenclature "superior holder" could not override or vary the express terms of the Indenture, which must be construed on its own language.

11. Insofar as respondent no.2 is concerned, the learned ASG submitted that it could not claim rights higher than those of respondent no.1 and at best, could only assert tenancy rights under respondent no.1. Respondent no.2 can claim ownership only in respect of certain portion of land identified in paragraph 4 of the operative part of the order dated 8th October 2010 of respondent no.5, i.e., land admeasuring 42 acres. It cannot lay claim to the entire 220/227 acres of the suit property.

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3 *2014 (14) SCC 204*

4 *Special Appeal no.669 of 1863 – Order dated 1st August 1866*

12. To establish the appellant's title, the learned ASG submitted that Salt is recorded in Entry 47 of List I in the Seventh Schedule of the 1935 GOI Act. As the suit lands were being used for salt manufacture they would fall within Entry 47 of List I and by virtue of Section 172(1) of the 1935 GOI Act the title and ownership vested with the then Federal Government. Thereafter, by operation of Article 294 of the Constitution of India, the suit lands continued to vest in the appellant. It was accordingly submitted that the finding recorded in paragraph 24 of the impugned judgment that the 1935 GOI Act (Exhibit-192) did not cover the suit lands, or that the appellant had failed to produce a notification demonstrating that the lands were property of the Federal Government, is misconceived. It was submitted that the State Government (respondent no.3) has neither pleaded nor asserted any independent claim of title over the suit lands. No written statement was filed by it in the suit, nor was the order dated 8th October 2010 passed by respondent no.5 challenged. In these circumstances, respondent no.3 is not the owner and therefore the title and ownership in suit lands can only be of the appellant and it continued to remain vested in the appellant.

13. The learned ASG then contended that the trial Court erred in failing to adjudicate prayer clause (b) in the suit. The suit specifically challenged respondent no.4's order dated 18th November 2002 and respondent no.5's order dated 8th October 2010. This challenge that the order of respondent no.5 holding that suit lands have vested in

favour of respondent no.1 was independent of prayer clause (a) seeking declaration of the appellant's title and was required to be independently adjudicated on merits. Prayer (b) of the suit is itself in the nature of a suit for setting aside order passed under Section 20(4) of MLRC. The trial Court erroneously held that the suit was not maintainable and failed to examine the validity of those orders. Even under Order 14 Rule 2(1) of the CPC, the trial Court was obliged to record findings on all issues after evidence was led. If respondent nos.1 and 2 fail to sustain the validity of respondent no.5 order dated 8th October 2010, then the suit property would necessarily vest in the appellant or the State Government, but not in any private party.

14. The learned ASG submitted that the impugned judgment erroneously relied upon the alleged admission of its witness PW 1 - Harikrishna Agarwal and held that the lands are private lands. He submitted that title cannot be diluted or extinguished on the basis of statements or admissions by a witness. The alleged admissions cannot divest the appellant of its ownership or vest title in respondent nos.1 or 2. The investiture of title in respondent nos.1 and 2 must be through a valid legal instrument or statutory act, which are non-existent in the present case.

15. Lastly, it was submitted that the various orders passed in litigations prior to 1983 or under BTAL Act and Salsette Act are irrelevant and not binding, since the appellant was not a party to any of the above proceedings. The learned ASG relied upon the judgments in *Union of*

India v. Alark Laxman Desai[5] *"Jagdish Hari Thatte v. Municipal Corporation of Greater Bombay"*[6], *"Sathyanath & Anr. v. Sarojamani"*[7], *"Vaman Janardan Joshi v. the Collector of Thana and the Conservator of Forests"*[8],*"Vikas Kamalakar Walavalkar v. the Deputy Salt Commissioner"*[9] *"Tata Steel Limited v. State of Jharkhand & Ors."*[10] and *"Ambika Prasad Thakur & Ors. v. Ram Ekbal Rai (Dead), by his Legal Representatives & Ors"*[11] in support of his contentions and prayed that the appeal ought to be allowed by this Court.

Submissions of respondent no.1:

16. Mr. Girish Godbole, the learned senior counsel appearing for respondent no.1 denied the appellant's claim for title and submitted that the Indenture of 1870 is a grant of various categories of land to Ramchunder Luxumonjee as Grantee for a term of 999 years. The Bombay Survey and Settlement Act, 1865 ("1865 Act") was enacted after the Indian territories came under the direct control of the British Crown. Under Section 2(k) of the said Act, a "superior-holder" is defined as a person having the highest right under a specific grant to hold land or to engage with the Government for land revenue due on account of any village or estate. The Act also defines the expressions "alienated village", "estate", "occupant" and "tenant". Section 36 confers a right of occupancy conditional upon payment of assessment, which right is declared to be

[5] *2016 SCC Online Bom 9948*
[6] *2006 SCC OnLine Bom 1236*
[7] *(2022) 7 SCC 644*
[8] *Regular Appeal no.9 of 1868*
[9] Suit no. 1172 of 2025
[10] *(2015) 15 SCC 55*
[11] *1965 SCC OnLine SC 52*

transferable and heritable property, and is to continue without question so long as the assessment is duly paid. It was contended that the statute recognized that an occupant shall not be deprived of his right so long as the assessment is paid, and such right is treated as proprietary in nature. The learned senior counsel submitted that the Bombay Land Revenue Code, 1879 ("1879 BLRC" or "1879 Code") was thereafter enacted to consolidate and amend the law relating to revenue administration. The 1879 Code *inter alia* defines "alienated", "estate" and "superior-holder", "occupant". The same statutory scheme is continued under the Maharashtra Land Revenue Code, 1966 ("1966 MLRC"), which repealed the 1879 Code. Reliance was placed on Sections 20, 29 and 37 of the 1966 MLRC and it was submitted that the Grantee was a Class I Occupant and as an Occupant, it is entitled to use and occupation of his land in perpetuity upon payment of land revenue and on fulfillment of terms and conditions annexed to his tenure. Mr. Godbole submitted that on the basis of this legislative continuity from 1865 to 1966, a person when colloquially called an "Owner" is really an "Occupant" in all enactments and what is described as "ownership" in revenue jurisprudence corresponds to the status of an "occupant" or "superior-holder". The concepts of "alienated village", "estate", "alienated land" and "superior-holder" have remained consistent across the 1865 Act, the 1879 Code and the 1966 MLRC. Applying the above framework, the learned senior counsel submitted that the Indenture of 1870 is not a lease, but a grant by which the lands were alienated in favour of the Grantee, and the rights of Her

Majesty's Government (thereafter the Provincial Government of Bombay) to recover land revenue were alienated. The alienation was subject only to reservation of mines, metals and minerals. Referring to the clauses of the Indenture, he emphasized that the document, when read as a whole, constitutes a grant of an estate comprising three villages, including the right to recover land revenue and other payments from occupants and even existing government lessees. No lessor-lessee relationship was created between the Secretary of State for India in Council and the Grantee by the Indenture of 1870.

17. Mr. Godbole then referred to sections 99, 100, 107, 172 and 173 of the 1935 GOI Act and the Legislative Lists in its Seventh Schedule. He submitted that Entry 47 of List I does not confer title to the appellant and the subject of "land" and "land revenue" is covered separately in Entry 21 and 39 of the List-II (Provincial Legislative List). The learned senior counsel submitted that legislative competence under the Entries must be examined in light of the purpose for which the land is held. Reliance was placed on *"Megh Raj & Anr. v. Allah Rakhia & Ors."*[12] to submit that the word "land" is sufficient to include every form of land, whether agricultural or not and that the term ought to receive the widest construction. Invoking the doctrine of pith and substance and upon a conjoint reading of Sections 172 and 173 of the 1935 GOI Act, the entries in the Seventh Schedule of the 1935 Act and Article 294 of the Constitution of India, the learned senior counsel submitted that as the suit lands were not used for salt manufacture at

[12] *1947 SCC OnLine FC 4*

the commencement of the Indenture, they would not vest in the Federal Government merely because, at a subsequent stage, salt was manufactured thereon under a licence issued by the Salt Department. Such a subsequent license issued decades later by the appellant cannot divest occupancy rights that have been vested under the Indenture.

18. Mr. Godbole also relied upon the Salsette Act and submitted that the grants in respect of villages mentioned in the Schedule to the Act, whether called as leases, grants or kowls were all instruments of alienation of land revenue to the Grantee. Section 3 of the Salsette Act abolished the right of the estate-holder to collect land revenue from the village and rendered the estate-holders like respondent no.1 liable to pay land revenue to the State Government. Nevertheless, the estate-holder was recognized as a superior-holder. Rule 76 of the 1921 BLRC ceased to have relevance after the enactment of the Salsette Act. The 1921 BLRC applies to unalienated land, whereas the suit lands formed part of alienated villages. Even otherwise, the 1921 BLRC contemplated that upon cessation of salt manufacture, land revenue becomes payable to the Revenue Department and nothing is payable to the Salt Department. Thus, Rule 76 merely conferred regulatory control over salt works for limited purposes and did not affect title. In any case, respondent no.1 did not itself apply for manufacture of salt; and merely because inferior holders applied for salt licences, the title of respondent no.1 could not be extinguished.

19. As regards prayer clause (b), Mr. Godbole submitted that under the scheme of Section 20 of the 1966 MLRC, the determination by respondent no.5 pertains to a claim vis-à-vis the State Government. Since the State Government (respondent no.3) has accepted the said determination and has not initiated any further proceedings, and as the enquiry under Section 3 of the Salsette Act has also culminated in favour of respondent no.1, the challenge under prayer clause (b) becomes academic once prayer clause (a) is rejected.

20. Mr. Aspi Chinoy, the learned senior counsel for respondent no.2 submitted that the Indenture constituted an absolute and complete grant of the suit lands to respondent no.1 as an owner. It was contended that the appellant's assertion of title on the premise that the lands were used by respondent no.2 for manufacture of salt and thereby served a federal purpose is wholly untenable. Entry 47 of List I of the 1935 GOI Act relating to "Salt" cannot be construed to mean that any land used for salt manufacture automatically vests in the Federal/Union Government. In the alternative, it was contended that by virtue of Section 172 of the 1935 GOI Act, the lands stood vested in the Province of Bombay, i.e., the State Government. He invited our attention to the Notification dated 16th July 1938 under the 1935 GOI Act, which identified lands utilized by the Bombay Salt Department. It was contended that the suit lands used by respondent no.2 were not included therein. This shows that the Federal Government did not have any title over the suit lands.

Placing reliance on the decision of the Hon'ble Supreme Court in *Mundra Salt and Chemical Industries*[13], he submitted that disputes of ownership between the Union and the State must be adjudicated under Article 294 of the Constitution and not under the repealed Section 37 of the 1879 BLRC. He submitted that on similar facts, when a license was issued under the Central Excise Act, the Supreme Court had negated the claim of the Union of India/the appellant and held that title to the salt pan lands did not vest in the Union Government. After the coming into force of the 1935 GOI Act, land became a State subject and the State exercised continuous dominion over the same in all matters. Consequently, no proprietary right accrued in favour of the appellant. Hence, the appeal ought to be dismissed as the appellant has failed to establish its title.

21. Reliance was also placed on Section 2(9) of the BTAL Act and the Notification dated 19th December 1949 recognizing respondent no.1 as the "landholder" of the suit lands. According to Mr. Chinoy, this position continued under the Salsette Act, under which the suit lands that were earlier exempt from payment of land revenue, now became liable to payment of land revenue to the State Government. Emphasis was laid on the long legislative and litigation history referred to earlier to demonstrate that until the year 1983, the appellant or its predecessor in title never asserted ownership over the lands covered by the Indenture of 1870. The claim of ownership surfaced for the first time only in 1983 and that too only in respect of 227 acres of Eksali land acquired and used by respondent no.2

[13] *(2001) 1 SCC 222*

out of the larger 3688 acres.

22. Mr. Chinoy submitted that respondent no.3 also does not have any title to the suit lands. It was contended that proceedings under the Salsette Act has affirmed the status of respondent no.1 as owner. Respondent no.5 in the order dated 8th October 2010 has referred to various orders and statutes and thereafter held neither the appellant nor respondent no.3 have title to the suit lands. Though respondent no.3-State had challenged the ownership of respondent no.1, it has failed in all proceedings, including before the Supreme Court. The order passed by respondent no.5 has thus attained finality qua respondent no.3-State. The appellant does not have any rights or title in the suit lands and its appeal ought to be dismissed.

23. Mr. Saurabh Kirpal, the learned senior counsel appearing for respondent no.1 adopted the aforesaid submissions and emphasized that the burden lies only upon the appellant to establish its title. Such burden cannot be shifted onto the respondents unless discharged by the appellant. He also relied upon Section 172 of the 1935 GOI Act to contend that legislative entries merely demarcate fields of legislation and do not determine ownership or governmental purpose. According to the learned senior counsel, manufacture of salt is not *per se* a governmental purpose that confers title over land. The mere use of a portion of the land by respondent no.2 for salt manufacture does not result in divestment or alteration of title. Reliance was placed on the judgments of the Supreme Court in *"Union of India & Ors. v. Vasavi Co-operative*

Housing Society Ltd. & Ors."[14], and *"Hoechst Pharmaceuticals Ltd. & Ors. v. State of Bihar & Ors."*[15] in support of the above arguments. It was further submitted that despite having knowledge of litigation between the respondents *inter se*, the appellant failed to intervene therein. Moreover, the appellant's witness (PW-1) has admitted that there was no instance of the appellant exercising or asserting control over the suit lands under the 1935 GOI Act. Such admission, being unequivocal, is binding upon the appellant.

24. Insofar as prayer clause (b) is concerned, Mr. Kirpal submitted that even assuming that the reasoning of the trial Court is erroneous, it is well settled that an appellate court is entitled to sustain the findings recorded by the trial Court on grounds different from those assigned by it, provided that the record contains sufficient material to do so. Placing reliance on Order XLI Rule 24 of the Code of Civil Procedure, 1908, it was contended that if this Court concludes that the appellant has failed to establish ownership, it can uphold the order dated 8th October 2010 passed by respondent no.5 on that basis. There would thus be no occasion for a remand or re-trial of the case. Reliance was placed on *"Shivakumar & Ors. v. Sharanabasappa & Ors."*[16] to contend that remand is warranted only where the reversal of decree and retrial is indispensable. The impugned judgment correctly holds that the appellant has no title to the suit lands and the appeal

[14] *(2014) 2 SCC 269*
[15] *(1983) 4 SCC 45*
[16] *(2021) 11 SCC 277*

deserves to be dismissed.

Objection on jurisdiction of the trial Court and maintainability of the suit is given up by respondent nos.1 and 2 before this Court.

25. This appeal was heard on several dates. One of the findings recorded by the trial Court was that the suit was not maintainable and the trial Court had no jurisdiction to entertain the suit instituted by the appellant. At the commencement of the final hearing, submissions were advanced by Mr. Anil Singh, the learned Additional Solicitor General of India to assail this finding and have the judgment set aside or remanded on this preliminary/limited ground. However, during the course of hearing, on instructions from respondent no.1 and respondent no.2, Mr. Aspi Chinoy, Mr. Girish Godbole and Mr. Saurabh Kirpal, the learned senior counsel for respondent nos.1 and 2 stated that they were neither insisting nor relying upon the findings recorded by the trial Court regarding jurisdiction and maintainability of the suit. Their statement has been recorded in the order of this Court dated 27th November 2025. It was after this concession that the learned ASG proceeded to address this Court on the merits of the appeal.

Reasons and Findings:

26. The central issue in this appeal is whether the appellant has succeeded in establishing its title over the suit lands. The trial Court, upon a detailed appreciation of oral and documentary evidence, has answered this issue

against the appellant. After considering the voluminous record, the statutory/legal framework and the submissions advanced by the parties, we find no reason to interfere with the findings recorded by the trial Court.

Burden of proof is on the appellant to prove its title

27. It is well settled that in a suit for declaration of title, the plaintiff must succeed on the strength of its own evidence and not on the weakness of the defendant's case. Section 101 of the Evidence Act, 1872 places the burden upon the party who asserts a fact and Section 102 provides that where both parties fail to adduce evidence, the suit must fail. Though the onus of proof may shift during trial, such shifting arises only when the plaintiff establishes a prima facie case of a high degree of probability. This law is well settled in the judgment of the Hon'ble Supreme Court cited by Mr. Kirpal in *"Union of India & Ors. v. Vasavi Co-operative Housing Society Ltd. & Ors."*[17], the relevant portions of which are quoted:

> *"15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.*
>
> *16. The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by the defendants in support of their case probabilises the case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.*

[17] *(2014) 2 SCC 269*

17. *At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in Moran Mar Basselios Catholicos v. Thukalan Paulo Avira [AIR 1959 SC 31] observed that:*

> *"20. … in a suit [for declaration] if the plaintiffs are to succeed they must do so on the strength of their own title."*

18. *In Nagar Palika, Jind v. Jagat Singh [(1995) 3 SCC 426] this Court held as under:*

> *"The onus to prove title to the property in question was on the plaintiff-respondent. … In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit."*

19. *The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against (sic them), in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.*

20. *We notice that the trial court as well as the High Court rather than examining that question in depth, as to whether the plaintiffs have succeeded in establishing their title on the scheduled suit land, went on to examine in depth the weakness of the defendants' title. The defendants relied on the entries in the GLR and their possession or repossession over the suit land to non-suit the plaintiffs. The court went on to examine the correctness and evidentiary value of the entries in the GLR in the context of the history and scope of the Cantonment Act, 1924, the Cantonment Land Administration Rules, 1925 and tried to establish that no reliance could be placed on the GLR. The question is not whether the GLR could be accepted or not, the question is, whether the plaintiff could prove its title over the suit property in question. The entries in the GLR by themselves may not constitute title, but the question is whether the entries made in Ext. A-3 would confer title or not on the plaintiff."*

28. In the present case, the appellant proceeds on the premise that the ownership of the Secretary of State for India in Council existed and continued with the Federal

Government and its successor government, unless divested. The burden is on the appellant to establish this fact. In our view, when the appellant filed the suit for declaration of its title as owners, the onus cannot be shifted onto respondent nos.1 and 2 to establish how the appellant was divested of title. The trial Court was required only to render a finding on the appellant's title. If the appellant fails to prove its own title, then the suit is liable to be dismissed without further examination.

Nature of the Indenture of 1870:

29. The entire case of the appellant proceeds on the premise that the Indenture while retaining the ownership of the appellant, is a limited grant and confers a lease for 999 years to the Grantee. The learned ASG has urged that clause XI, requires prior permission of the Collector in certain cases of assignment/transfer and thereby converts the Grant into a lease. We are unable to agree with this contention. For the sake of convenience, clause XI of the Indenture is quoted:

> *"XI. That the Grantee his Heirs, Executors, Administrators and Assigns shall not assign or transfer the premises intended to be hereby granted and for the time being subject to this grant or any part which with the consent hereinafter mentioned shall have been served from the residue save and except as an entirety unless he or they shall have first obtained the consent in writing in this behalf of the Collector or other Revenue Officer of having Chief Authority in the district Provided always and it is hereby expressly declared agreed by and between the parties hereto that if the said several payments hereinbefore reserved and covenanted to be paid to her Majesty, her Heirs and Successors or any part thereof respectively shall be behind and unpaid for the space of one month after any of the days whereon payment*

thereof ought to have been made (although no formal or legal demand thereof shall have been made) or if the Grantee his Heirs, Executors, Administrators or shall not well and truly observe and perform all and every the covenants clauses, conditions and provisoes in these presents contained and on his or their part or behalf to be observed and performed then and in either or any of such cases it shall be lawful for Her Majesty, her Heirs and Successors into the said lands and premises intended to be hereby granted and for the time being subject to this grant to re-enter and the same and every part thereof thenceforth to have again re-possess and enjoy in her or their former estate as if these presents had never been made.....”

30. In our view, the Indenture is not a mere demise of possession, but is a grant of a comprehensive estate. The Indenture alienates a wide bundle of rights of the Secretary of State for India in Council to the Grantee, including the right to hold and enjoy the lands, the right to assign and mortgage the estate, the right to recover land revenue from occupants, with full authority to enforce payment and resume possession in case of default. The Indenture, when read as a whole, effects an alienation of the proprietary rights including fiscal and administrative incidents of ownership which ordinarily vest in the government. The Indenture transfers to the Grantee a heritable, transferable and assignable estate. We find that clause XI of the Indenture does not detract from the overall nature of the rights conveyed or the character of the Indenture. If the intention was to create a lease without affecting title of the appellant, the document would have expressly reflected such an arrangement. We may note that as the concept of lease was recognized even prior to the 1870 Indenture, or the Transfer of Property Act, 1882 as evidenced by

contemporaneous statutory provisions including sections II(e), XIV, XXXVII and XXXVIII of the Bombay Survey and Settlement Act, 1865.

The appellant's case of retaining "title" is inconsistent with the contemporaneous legislative framework.

31. Mr. Godbole has extensively argued that the legislative framework as discussed below recognized "superior holders" as the owners of the land. We accept this submission as the rights conferred under the Indenture of 1870 falls within the contemporaneous legislative framework. For the sake of convenience, the relevant statutory provisions are quoted:

Bombay Survey and Settlement Act, 1865

"An Act to provide for the survey, demarcation, assessment, and administration of lands held under Government, in the Districts belonging to the Bombay Presidency, and for the registration of the rights and interests of the occupants of the same.

II(e) An "alienated village" is a village, held and managed by private individuals, exempt from payment of land revenue, or under Acts II or VII of 1863 of the Council of the Governor of Bombay, or under a grant of lease fixing the Government demand in perpetuity.

II(f) "Estate" means any land, or interest in land, wherever situated, vested in any person or body of persons, and separately recognised in the public accounts.

II(j) "Occupant" is the person whose name is entered authorisedly in the Survey papers, or other public accounts, as responsible to Government for payment of the assessment due upon any field, or recognised share of a field.

II(k) "Superior Holder" is the person having the highest right under Government recognised by the custom of the country, or resting on specific grant, to hold land or engage with Government for the land revenue due on account of any village or estate.

II(l) "Tenant" is the person holding under an occupant or superior holder, by a right derived from him, and otherwise than by ownership or inheritance.

xxxvi. *Right of occupancy conditional on payment of assessment declared to be transferable and heritable property, and to be continuable without question, at the expiration of a settlement lease, on the occupant's consenting to the revised rate.*

The occupant of a survey field, or recognised share of a field or number, shall not be deprived of his right of occupancy in the said field or recognised share of a field by any Revenue Officer so long as he continues to pay the assessment due thereon. This right of conditional occupancy is declared to be a transferable and heritable property; and any person, lawfully and authorisedly in occupation of any land at the expiration of a settlement lease, who shall consent to the rate which may be assessed on his land at a revision of assessment, shall be continued in his occupancy without question.

Bombay Land Revenue Code, 1879

"Preamble"

"WHEREAS it is expedient to consolidate and amend the law relating to Revenue-officers, and to the assessment and recovery of land-revenue, and to other matters connected with the land-revenue-administration; it is hereby enacted as follows:

…

3. (1) to (4) ……

(5) "estate" means any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same;

(10) "to hold land" means to be legally invested with a right to the possession and enjoyment or disposal of such land, either immediate or at the termination of tenancies legally subsisting;

(11) "holder" or "landholder" signifies the person in whom a right to hold land is vested, whether solely on his own account or wholly or partly in trust for another person, or for a class of persons, or for the public, it includes a mortgagee vested with a right to possession;

(12) "holding" signifies land over which such right extends;

(13) "superior holder" signifies a holder entitled to receive from other holders rent or land-revenue on account of lands held by them, whether he be accountable or not for the same, or any part thereof, to the Government;

(14) "inferior holder" signifies a holder liable to pay the rent or land-revenue to a superior holder, whether on account of such superior holder or Government;

(15) "tenant" signifies a person who holds by a right derived from a superior holder called his "landlord" or from his landlord's predecessor in title;

(16) "occupant" signifies a holder of unalienated land, or where there are more holders than one, the holder having the highest right in respect of any such land.

(19) "alienated" means transferred insofar as the rights of Government to payment of the rent or land-revenue are concerned, wholly or partially, to the ownership of any person."

Maharashtra Land Revenue Code, 1966

Section 2 : Definitions.— In this code, unless the context otherwise requires,—

(2) "alienated" means transferred in so far as the rights of the State Government to payment of rent or land revenue are concerned, wholly or partially, to the ownership of any person ;

(8) "estate" means any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same ;

(12) "to hold land" or "to be a land holder of land" means to be lawfully in possession of land, whether such possession is actual or not;

(19) "land revenue" means all sums and payments, in money received or legally claimable by or on behalf of the State Government from any person on account of any land or interest in or right exercisable over land held by or vested, in him, under whatever designation such sum may be payable and any cess or rate authorised by the State Government under the provisions of any law for the time being in force ; and includes, premium, rent, lease money, quit rent, judi payable by a inamdar or any other payment provided under any Act, rule, contract or deed on account of any land;

(38) "superior holder" except in Chapter XIV means a land-holder entitled to receive rent or land revenue from other land-holders (called "inferior holders") whether he is accountable or not for such rent or land revenue, or any part thereof, to the State Government ; Provided that, where land has been granted free of rent or land revenue, subject to the right of resumption in certain specified contingencies by a holder of alienated land whose name is authorisedly entered as such in the land records, such holder shall, with reference to the grantee, be deemed to be the superior holder of land so granted by him, and the grantee shall, with reference to the grantor, be deemed to be the inferior holder of such land, and for the purposes of sections 147, 151 and 152 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, shall, notwithstanding anything hereinafter contained in the definition of the word "tenant", be deemed to be the

tenant of such grantor;

Section 20. Title of State in all lands, public roads, etc., which are not property of others.—

(1) All public roads, lanes and paths, the bridges, ditches, dikes and fences, on, or beside, the same, the bed of the sea and of harbours and creeks below the high watermark, and of rivers, streams, nallas, lakes and tanks and all canals and watercourses, and all standing and flowing water, and all lands wherever situated, which are not the property of persons legally capable of holding property, and except in so far as any rights of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declare to be, with all rights in or over the same, or appertaining thereto, the property of the State Government and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as may be prescribed by the State Government in this behalf, subject always to the rights of way, and all other rights of the public or of individual legally subsisting.

(2) Where any property right in or over any property is claimed by or on behalf of the Government or by any person as against the Government, it shall be lawful for the Collector or a survey officer, after formal inquiry of which due notice has been given, to pass an order deciding the claim.

29. Classes of persons holding land.—

(1) There shall be under this Code the following classes of persons holding land from the State, that is to say —

(a) Occupants—Class I,
(b) Occupants—Class II,
(c) Government lessees.

(2) Occupants—Class I shall consist of persons who—

(a) hold unalienated land in perpetuity and without any restrictions on the right to transfer,

(b) immediately before the commencement of this Code hold land in full or occupancy Bhumiswami rights without any restrictions on the right to transfer in accordance with the provisions of any law relating to land revenue in force in any part of the State immediately before such commencement, and 24[(c) on the 21st April 2018, being the date of commencement of the Maharashtra Land Revenue Code (Amendment) and the Maharashtra Land Revenue (Inclusion of certain Bhumidharis in Occupants—Class I Permission) Rules (Repeal) Act, 2018 (Mah. XLIV of 2018), were holding the

land in Vidarbha in Bhumiswami rights with restrictions on right to transfer, or in Bhumidhari rights in any local area in Vidarbha.]

(3) Occupants—Class II shall consist of persons who—

(a) hold unalienated land in perpetuity subject to restrictions on the right to transfer;

(b) immediately before the commencement of this Code hold—

(ii) elsewhere hold land in occupancy rights with restrictions on the right to transfer under any other law relating to land revenue; and

(c) before the commencement of this Code have been granted rights in unalienated land under leases which entitle them to hold the land in perpetuity, or for a period not less than fifty years with option to renew on fixed rent, under any law relating to land revenue and in force before the commencement of this Code ; and all provisions of this Code relating to the rights, liabilities and responsibilities of Occupants—Class II shall apply to them as if they were Occupants—Class II under this Code.

32. A conjoint reading of the relevant provisions under the 1865 Act, the 1879 BLRC and the 1966 MLRC demonstrates a consistent legislative framework recognizing the concepts of “alienated”, “alienated village”, “estate”, “occupant” and “superior-holder”. The expression “alienated” denotes a transfer of the government right to receive land revenue in favour of a private person, while an “alienated village” refers to a village held and managed by such person, with exemption from payment of land revenue to the State. An “occupant” is a person whose name is entered in the revenue record for payment of assessment and in actual possession of unalienated land, other than a tenant. Section 36 of the 1865 Act confers upon an occupant a right of occupancy and expressly recognizes such right as heritable and transferable property, immune from disturbance so long as assessment

is duly paid. A “superior-holder” under 1865 Act and 1879 BLRC signifies a person having the highest proprietary interest in land, with a statutorily recognised right to hold the land and recover revenue from inferior holders. We find that this conceptual framework of superior-holder is substantially preserved under Section 2(38) of the 1966 MLRC, which while repealing the 1879 Code, retains its essential structure. Section 20 of the 1966 MLRC declares that all lands, including public roads, bridges, rivers and lakes, and all lands not shown to be the property of others, vest in the State Government. However, sub-section (2) of Section 20 provides that any competing claim by or against the State Government shall be adjudicated by the Collector upon due notice and inquiry. Section 29 classifies landholders into Occupants - Class I (holding unalienated land in perpetuity and without restriction on transfer), Occupants - Class II (holding unalienated land in perpetuity subject to restrictions on transfer), and Government lessees. Section 37 of the 1966 MLRC secures the occupant’s right to use and occupy the land in perpetuity, subject to payment of revenue obligations and on the fulfillment of conditions attached to the tenure. In the present case, the Grantee clearly answers to the description of a Class I-Occupant, enjoying heritable and transferable rights in perpetuity. The legislative continuity from the 1865 and 1879 enactments through to the 1966 MLRC affirms a settled position in revenue jurisprudence that what is colloquially described as “ownership” corresponds to the statutory status of an “occupant” or, in appropriate cases, a “superior-holder”. The core concepts of

"alienated village", "estate", "alienated land" and "superior-holder" have remained materially unchanged across these enactments. The statutory framework thus accords to the occupant, a proprietary interest in the land. Viewed against this backdrop, the Indenture of 1870 must be construed as effecting a divestment of the Her Majesty's Government revenue and proprietary interests and a corresponding conferment of a heritable, transferable and assignable estate in favour of the Grantee. The Indenture evidences a grant by which the lands stood alienated from payment of rent and land revenue as defined in Section II (d) of the 1865 Code, Section 3(20) of the 1879 BLRC and Section 2(20) of the 1966 MLRC. The reservation of limited rights, such as with respect to mines and minerals or prior permission of Collector for transfer does not dilute the essential character of the grant as one of alienation. Thus, in this legislative background, the legal relationship created by the Indenture cannot be characterized as that of lessor and lessee between the Secretary of State for India in Council and the Grantee as is sought to be argued by the appellant.

There is no "title" in appellant's favour after Government of India Act, 1935 or under Article 294 of the Constitution of India

33. The appellant's next argument on title is based on section 172(1) of the 1935 GOI Act read with Entry 47 of List I relating to "Salt". Before dealing with the same, the relevant provisions of the 1935 GOI Act and the Constitution of India are extracted:

"Section 99. Extent of Federal and Provincial laws –

(1) Subject to the provisions of this Act the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies -

a) to British subjects and servants of the Crown in any part of India; or

b) to British subjects who are domiciled in any part of India wherever they may be; or

c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or

d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be."

"Section 100. Subject matter of Federal and Provincial laws.-

(1) Notwithstanding anything in the two next succeeding sub-sections, the Federal Legislature has and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List")

(2) Notwithstanding anything in the next succeeding sub-section, the Federal Legislature, and subject to the preceding sub-section, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").

(3) Subject to the two preceding sub-sections the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").

(4) The Federal Legislature has power to make laws with

respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof."

"Section 104. Residential powers of legislation.-

(1) The Governor General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion."

"Section 172. Vesting of lands and buildings-

(1) All lands and buildings which immediately before the commencement of Part III of this Act were vested in His Majesty for the purposes of the government of India shall as from that date-

(a) in the case of lands and buildings which are situate in a Province, vest in His Majesty for the purposes of government of that Province unless they were then used, otherwise than under a tenancy agreement between the Governor-General in Council and the Government of that Province, for purposes which thereafter will be purposes of the Federal Government or of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, or unless they are lands and buildings formerly used for such purposes as aforesaid, or intended or formerly intended to be so used, and certified by the Governor-General in Council or, as the case may be. His Majesty's Representative, to have been retained for future use for such purposes or to have been retained temporarily for the purpose of more advantageous disposal by sale or otherwise;

(b) in the case of lands and buildings which are situate in a Province but do not by virtue of the preceding paragraph vest in His Majesty for the purposes of the government of that Province, and in the case of lands and buildings which are situate in India elsewhere than in a Province, vest in His Majesty for the purposes of the government of the Federation or for the purposes of the exercise of the functions of the Crown in its relations with Indian States, according to the purpose for which they were used immediately before the commencement of Part III of this Act; and

(c) *In the case of lands and buildings which are situate elsewhere than in India (except lands and buildings situate in Burma or Aden), vest in His Majesty for the purposes of the government of the Federation or, if they were immediately before the commencement of Part III of this Act used for purposes of the department of the Secretary of State in Council, for the purposes of His Majesty's Government in the United Kingdom.*

(2) *Except with the consent of the Governor-General, effect shall not be given to any proposal for the sale of any lands or buildings which by virtue of this section are vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, or to any proposal for the diversion of any such lands and buildings to uses not connected with the discharge of the functions of the Crown in relation to India or Burma……."*

Seventh Schedule
Legislative Lists

"List I" – Federal Legislative List

Entry 10 : Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province; subject always to Provincial legislation, save insofar as Federal law otherwise provides, and, as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

Entry 47 : Salt.

"List II" – Provincial Legislative List

Entry 21 : Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

Entry 39 : Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights and alienation of revenue.

Constitution of India

"Article 294. Succession to the property, assets, rights, liabilities and obligations in certain cases:-
As from the commencement of this Constitution—

(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the

purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State, subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab."

Seventh Schedule, List-I – Union List

Entry 58. Manufacture, supply and distribution of salt by United agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.

Seventh Schedule, List-II – State List

Entry 18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

Entry 45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

34. Under the Government of India Act 1919, there was no demarcation of legislative powers between the Federal Government and the provinces. There was a fundamental constitutional change with the 1935 GOI Act, which introduced demarcation of legislative powers through sections 99 and 100. These provisions read with the Seventh Schedule allocated the subjects between Federal Government and the Provincial Government through the Federal Legislative List-I, Provincial Legislative List-II and the Concurrent Legislative List-III. The argument of the learned ASG is that as Salt is in List-I and since suit lands were used for manufacture of salt, therefore all incidents of it including ownership and transfer of salt lands will vest

with the then Federal government. In our view, this argument is misconceived and proceeds on a fundamental misconception. Section 172 provides for vesting of property held for the purposes of the Federation and states that all lands and buildings that vested in His Majesty for the Government of India prior to the commencement of Part III of the Act (The Governor's Provinces) would thereafter vest in the Provincial Government if situated within a Province, except where they were used, intended to be used, or retained for purposes of the Federal Government or His Majesty's Representative, as duly certified. Under Entries 21 and 39 of List-II, land and land revenue matters fell within the exclusive provincial field. Consequently, all the proprietary rights in land, administration of land revenue and regulation of land tenures are matters that vest in the Provincial Government. The appellant cannot claim title over the suit lands on the basis of Entry 47 in List I of the 1935 GOI Act. The Indenture was executed when the suit lands were agricultural lands, classified by revenue tenures. The subsequent manufacture of salt under license from the Salt Commissioner few decades later certainly cannot vest ownership in the licensing authority or divest the Grantee of its proprietary rights in the lands.

35. It is correctly submitted by the learned senior counsel for respondent nos. 1 and 2 that Entry 10 in List-I which refers to works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Federation. The suit lands are not covered by any contemporaneous order or notification. Further, Entry 47 of

List-I only relates to a field of legislation. It does not *ipso facto* determine ownership of land upon which salt is manufactured. Entry 47 only indicates that the Federal Government alone had the mandate to legislate matters relating to salt. The entries in the three Lists of the Seventh Schedule are not sources of legislative power, but demarcate the fields within which such power may be exercised by the respective government. They are legislative heads of an enabling character, intended to define and confine the respective spheres of competence of the Federal Government and the Provincial Government, both of which are expressed in clear and precise terms. The doctrine of "pith and substance" is invoked only where reconciliation between conflicting Entries is not possible, to ascertain the true nature and character of the legislation and to identify the Entry to which it properly relates. In our view, regulatory control of the salt manufacturing activity is distinct from proprietary rights in the land. If the appellant's argument is to be accepted, then it would mean that every private land used for salt manufacture would automatically vest in the appellant, a proposition unsupported by constitutional or statutory scheme.

36. In "*Megh Raj*", the Privy Council had an occasion to consider Sections 100, 107 of the 1935 GOI Act and the entries in the Seventh Schedule in the context of challenge to the validity of the Punjab Restitution of Mortgaged Lands Act, 1938. Considering the interplay between the three Lists, the Court held that "land" in Entry 21 in List-II is sufficient in itself to include every rights in land including

its transfer, devolution and alienation, making it a provincial or State subject. The Court held as follows:

> *"…The key to item 21 is to be found in the opening word, "land." That word is sufficient in itself to include every form of land, whether agricultural or not. Land, indeed, is primarily a matter of provincial concern. The land in each province may have its special characteristics in view of which it is necessary to legislate, and there are local customs and traditions in regard to land-holding and particular problems of provincial or local concern which require provincial consideration. It would be strange if the land in a province were to be broken up into separate portions, some within and some outside the legislative powers of the province. Such a conflict of jurisdiction is not to be expected. Item 21 is part of a constitution and would, on ordinary principles, receive the widest construction, unless for some reason it is cut down either by the terms of item 21 itself or by other parts of the constitution, which has to be read as a whole. As to item 21, "land," the governing word, is followed by the rest of the item, which goes on to say, "that is to" say. These words introduce the most general concept — "rights in or over land." "Rights in land" must include general rights like full ownership or leasehold or all such rights. "Eights over land" would include easements or other collateral rights, whatever form they might take. Then follow words which are not words of limitation but of explanation or illustration, giving instances which may furnish a clue for particular matters: thus there are the words "relation of landlord" and tenant, and collection of rents. These words are appropriate to lands which are not agricultural equally with agricultural lands. Rent is that which issues from the land. Then the next two sentences specifically refer to agricultural lands, and are to be read with items 7, 8 and 10 of List III. These deal with methods of transfer or alienation or devolution, which may be subject to federal legislation, but do not concern the land itself, a sphere in which the provincial and federal powers are concurrent, subject to the express exception of the specific head of agricultural land which is expressly reserved to the provinces. The remainder of item 21 specifies important matters of special consequence in India relating to land. The particular and limited specification of agricultural land proves that "land" is not used in item 21 with restricted reference to agricultural land but relates to land in general. Item 2 is sufficient to give express powers to the provinces to create and determine the powers and jurisdiction of courts in respect of land, as a matter ancillary to the subject of item 21."*

37. In "*Hoechst Pharmaceuticals Ltd.*", the Hon'ble Supreme Court held that the various entries in the three

Lists are not 'powers' of legislation, but 'fields' of legislation, the relevant portion of which is quoted:

> *"74. It is equally well settled that the various entries in the three Lists are not 'powers' of legislation, but 'fields' of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution. Taxation is considered to be a distinct matter for purposes of legislative competence. Hence, the power to tax cannot be deduced from a general legislative entry as an ancillary power. Further, the element of tax does not directly flow from the power to regulate trade or commerce in, and the production, supply and distribution of essential commodities under Entry 33 of List III, although the liability to pay tax may be a matter incidental to the Centre's power of price control.*
>
> *75. "Legislative relations between the Union and the States inter se with reference to the three Lists in Schedule VII cannot be understood fully without examining the general features disclosed by the entries contained in those Lists": Seervai in his Constitutional Law of India, 3rd Edn., Vol. 1 at pp. 81-82. A scrutiny of Lists I and II of the Seventh Schedule would show that there is no overlapping anywhere in the taxing power and the Constitution gives independent sources of taxation to the Union and the States. Following the scheme of the Government of India Act, 1935, the Constitution has made the taxing power of the Union and of the States mutually exclusive and thus avoided the difficulties which have arisen in some other Federal Constitutions from overlapping powers of taxation."*

38. This argument of the respondents is also fortified by the Notification dated 16th July 1938 issued under Section 172 of the 1935 GOI Act. The said Notification assumes critical importance as it specifically identified the lands and buildings then used by the Bombay Salt Department. The suit lands are not mentioned therein. This absence is fatal to the appellant's case. If indeed the Federal government had retained ownership and title in any capacity including of a lessor, the suit lands would have been notified by the then Federal Government. In our view, this strikes at the very root of the matter. The absence of notification in appellant's favour coupled with continuous recognition by

respondent nos.3 to 5, of respondent no.1 rights as landholder negates the appellant's argument of the title and ownership in the suit lands vesting in the Federal Government. Article 294 of the Constitution of India only continues the position of the properties between the Union Government and the State as on the commencement of the Constitution. As the suit lands were not vested in the Federal Government under Section 172 of the 1935 GOI Act, they did not vest in the Union of India by virtue of Article 294 of the Constitution of India.

39. In *"Mundra Salt",* the Hon'ble Supreme Court held that merely because the suit lands were used for manufacture of salt, the Union of India cannot claim title over the suit lands. In "*Mundra Salt",* the land was sold by the government in 1952 through a public auction wherein Mundra Salt emerged as highest bidder. The sale was confirmed. The possession was handed over and the bidder's name was duly entered in the revenue records. Land acquisition proceedings were initiated by the local municipal corporation and around then, the Union of India through the Salt Department asserted title over the salt pan land contending that the respondents were merely lessees or licensees, and not its owners. Reliance was placed on Section 37 of the 1879 BLRC which declared that all lands not proved to be privately owned vested in the Crown and it was argued that in the absence of proof of title, the land belongs to Union of India. This contention was rejected and the Hon'ble Supreme Court traced historical evolution of land laws and observed that the concept of absolute

ownership of lands vested in Crown was a feature of the pre-constitutional era when federalism has not yet emerged. After coming to force of the Constitution of India, this position was fundamentally altered and the question of ownership between the Union and the State must be determined with reference to Article 294 of the Constitution alone and not with reference to obsolete Section 37 of 1879 BLRC. The Hon'ble Supreme Court dismissed the claim of the Union of India and held:

> *"12. The legal position which emerges from the aforesaid laws appears to be that unless an individual proves his claim and title over the land, where the salt work is being carried on, such land was deemed to be that of the Government. It is in these set of laws, Section 37 of the 1879 Code also projects itself in the same manner. Under it, if any individual fails to establish his title, the Union Government is presumed to be the owner of the land. However, we have to keep in mind, when the 1879 Code was promulgated federalism was not even born. In other words, then there was no question of any right of two Governments to hold the properties between them as it is now between the Union and the State Governments. Then the right over the land was confined to that of the Crown and an individual. That is why Section 37 of the 1879 Code recognises pre-emptory right of the Crown in respect of all lands which are not the property of individuals. This conception of exclusive ownership over all land by the Crown stood dissolved after coming into force of the Constitution of India, under which right over such land was conferred both on the Union and the State Governments.*
>
> *13. In order to adjudicate the controversy in this case it is necessary to refer to Article 294 of the Constitution of India, which is quoted hereunder:*
>
> *"294. Succession to property, assets, rights, liabilities and obligations in certain cases.—As from the commencement of this Constitution—*
>
> *(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and*

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab."

This article declares which property would vest in the Union and which would vest in the State Government. Under it, all properties immediately before the commencement of the Constitution which vested in His Majesty for the purposes of the Government of the Dominion of India vests in the Union and all properties which vested in His Majesty for the purposes of the Government of each Governor's Province vests in the corresponding State and all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province are recognised to be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State. So under this article ownership question between the Union and the State Government is to be tested and not under obsolete Section 37 of the 1879 Code. Faced with this, Mr Rohatgi submits that this vesting in favour of the State could only be, if before the commencement of the Constitution the land was used for the purposes of the Government of the Governor's Province. We have already referred to the historical background as to how first rights of individual were recognised. Thereafter a register was brought into the picture for recording the names of such owners including occupancy-right holders and later land revenue was charged from such holders of such land by the Government of the Province, the administration and control of which was with the Government of Provinces except when licences were issued by the Union under the relevant Salt Act. This position becomes more clear, after coming into force of the Government of India Act, 1935. The 1935 Act for the first time effectively demarcated the legislative powers of the federal legislature and the provincial legislature. Sections 99 and 100 of this Act define fields of legislation read with three lists contained in the Seventh Schedule. "Land" under Entry 21 and "land revenue" under Entry 39 fell under the Provincial List. When the Constitution of India came into force, we find similar entries of "land" under Entry 18 and "land revenue" under Entry 45 of List II of the

Seventh Schedule. This leaves no doubt that both "land" and "land revenue" fell under the State List and were governed by the State even prior to the coming into force of the Constitution of India.

14. The question of title of the Union in the proceedings under the Land Acquisition Act, which is under consideration, admittedly is after the enforcement of the Constitution of India. Hence the title over the land in question could not be that of the Union of India.

40. It is then contended by the appellant that the trial Court failed to construe the Indenture in accordance with the Government Grants Act, 1895. Reliance is placed on the judgment of the Hon'ble Supreme Court in "*Dinshaw Shapoorji Anklesari", "Tata Steel Limited"* and decisions of this Court in "*Vikas Kamalkar Walawalkar" and "Vaman Janardan Joshi".* In these judgments, it was held that the Transfer of Property Act, 1882 is inapplicable to Government Grants Act and such grants must operate strictly according to their own tenor. However, the said judgements are of no assistance to the appellant. In "*Dinshaw Shapoorji Anklesari",* the dispute concerned a property which was held under an old grant. The superstructure had been transferred in favour of Dinshaw Shapoorji Anklesaria and others by a grant of lease, but the title of the land remained with the Union of India. The Hon'ble Supreme Court allowed the appeal of the Union of India, reaffirming the principle that a grant of lease of land is governed entirely by the terms of the grant, and under as per section 3 of the Government Grants Act, 1895, such grants take effect according to their tenor notwithstanding any rule of law to the contrary. Applying this principle, the Court held that the grantee under old grant terms is a mere occupier/licensee having no title over the land, so as to

entitle him to transfer the land to another person, and that it is always open to the Union of India to resume land held on old grant terms. The Hon'ble Supreme Court held as follows:

> "*41. Therefore, it is clear that the Government has unfettered discretion and under Section 3 impose any condition, limitation or restriction in its grants and the rights, privileges and obligations of the grantee would be regulated only according to the terms of the grant itself though they may be inconsistent with the provisions of any statute or common law.*
>
> *42. The grants of lands situated in cantonment area under Old Grants form a self-contained provision prescribing the procedure as to the grant and resumption of the land and hence recourse to the civil procedure code or the Specific Relief Act will not be applicable."*

Such is not the case here. Similarly in *Tata Steel Limited,* the Hon'ble Supreme Court was dealing with two grants by erstwhile Governor of Bihar. While construing these two grants, it was held that the rights and obligations arising out of any transfer of piece of land or interest by the Government, are to be ascertained only from the tenor of the document made by the government evidencing such a transfer. In "*Vikas Kamalkar Walawalkar*", while examining a grant of lease, this Court similarly held that the provisions of the Transfer of Property Act, 1882 are inapplicable to the grants made by the government. In "*Vaman Janardan Joshi*" the grant in question was given by the government of Angria and confirmed by the government of Peshva. The issue was whether the English law, which says that a grant from the Crown is construed most strictly against the grantee and most beneficially for the Crown, is applicable in India. In that context, the Court held that unless a sanad contains word expressly granting

the ownership of the soil, it must be held that ownership of the soil was not granted. It is significant to note that the grants examined by Hon'ble Supreme Court in "*Dinshaw Shapoorji Anklesari"* and *"Tata Steel"* and this Court in "*Vikas Kamalkar Walawalkar"* were grants which were expressly denominated as "leases", which vested in the grantee only a limited, conditional, and terminable right of use and occupation, with title in the land remained with the grantor. The grant examined in "*Vaman Janardhan Joshi"* was also of a different nature altogether. There is no doubt as to the settled legal position that government grants take effect according to their own tenor. The grant under the Indenture has been construed in its own terms by the trial Court and when read as a whole, undeniably discloses that what was conferred upon the Grantee was not a mere licence to use, but a comprehensive grant of an estate which carried with it the plenitude of proprietary rights ordinarily incident to ownership. Considering this interpretation of the grant of Indenture, the reliance is placed on the judgment of this Court in "*Tejubhai Kom Dadukhan Junglekhan"* also fails.

The appellant's reliance on Rule 76 of the 1921 BLRC is equally misplaced.

41. The appellant has then sought to establish its title by placing reliance on Rule 76 of the Bombay Land Revenue Rules, 1921. The said Rule reads as under:-

> *"1. Use of land for the manufacture of salt prohibited except on certain conditions. No occupant of unalienated land (including Khoti and Talukdari) shall use the same or any part thereof for the manufacture of salt without the*

previous permission in writing first of the Collector of Salt Revenue, and then of the Collector of the District.

2. The Collector of the District may, in any case where such permission is granted, either-

(a) require the occupant to relinquish his rights of occupation, and to enter into an agreement that such land shall be placed at the disposal of the Salt Department, subject to a lease in favour of the applicant on such terms as the Collector of Salt Revenue under the general orders of Government may require; or

(b) permit the use applied for without requiring the occupant to relinquish his rights of occupation on the following conditions:-

(i) that the occupant shall pay such fine as the Collector may deem proper, not exceeding one-tenth of the amount which would be leviable under section 66 in a case of unauthorised use, and

(ii) that the occupant shall execute an agreement that he will pay to the credit of Salt Revenue in lieu of the existing assessment and Local Fund cess, such amount or rate as may be imposed by the license to be granted by the Collector of Salt Revenue in accordance with the general and special orders of Government, and shall also in respect of the land used conform to all the conditions of such license; and

(iii) that whenever the Collector of Salt Revenues declares that the land, or any part thereof, is not used or has ceased to be used for the manufacture of salt, such land shall forthwith become liable to the survey assessment which was chargeable upon it immediately before it was permitted to be used for the manufacture of salt."

42. In 1946, this Rule was then amended and reads as under:-

"76(1) [No occupant of unalienated land, whether assessed for any purpose or not, shall use the same or any part thereof for the manufacture of salt without the previous permission in writing of the Collector of the district.

(2) The Collector may, in consultation with the Collector of Central Excises and Salt Revenue, Bombay, grant permission for the use of such land for such purpose, subject to the payment of non-agricultural assessment leviable on the land, and to such further conditions as the Collector may, subject to the general or special orders of

the Provincial Government, impose].”

43. It was argued by the learned Additional Solicitor General that in order to manufacture salt, Rule 76(2)(a) required the occupant to relinquish his occupancy rights and place such land at the disposal of the Salt Department subject to a lease. We are unable to accept the aforesaid contention as a bare reading of the said Rule does not reflect that for procuring a license to manufacture salt, the occupant was required to surrender its occupancy rights to the appellant. Until 1950, no separate license to manufacture salt on the suit land was issued. There is no evidence of the appellant contemporaneously taking over possession of the suit lands under the said Rule 76(2)(a). These facts have been confirmed by the appellant’s witness PW-1 in his cross-examination, the relevant portion of which reads as follows :-

Paragraph no.14 (@page no.269 of paper-book)

"It is true to say that Collector Revenue is the only Competent Authority to deal with the issue for conversion of the lands for manufacture of salt. The Collector Salt is being only consulted before grant of permission for manufacture of salt. It is true to say that there must be relinquishment of land in favour of Collector Revenue as per Rule 76(2)(a) of the rules 1921. I do not know for that purpose there must be registered Relinquishment Deed for being the transfer of the property. I have not come across any lease deed by Collector Land Revenue executed in favour of defendant Nos. 1 & 2 as contemplated under 76(2)(a). I have come across a final order passed by Collector Revenue as per Rule 76(2)(a). I have produced it on record in the suit. There is no any agreement between defendant No.1 or 2 at one hand and salt department on the other hand to place the lands for manufacture of salt as contemplated under 76(2)(a) under Manik Mira Salt Works."

Paragraph no.18 (@page no.273 of paper-book)

"It is true to say that as per contents of Exh. 214 only Defendant No.1 was competent to make an application to convert the land for manufacture of salt and in that case

only the question would arise whether to grant or refuse the permission. It is true to say that Defendant No.1 never made such application. It is true to say that Defendant No.1 never asked the salt department or Collector Thana to convert the land of Manik Mira Salt Work for salt Manufacturing. It is true to say that as per Exh. 214 only Defendant No.1 established its right over the land of Manik Mira Salt work. It is true to say that Defendant No.2 was not permitted by Defendant No.1 and 4 to go on for the salt activities. I do not know whether in this regard collector Salt had not taken any action. I do not know whether I have any document to show that any action has been taken against Defendant No. 1. I have not seen any documents to that effect."

44. Thus, the contention of purported relinquishment/ surrender of occupancy rights in appellant's favour cannot be accepted, merely because respondent no.2 had obtained salt manufacturing licenses. In any case, Rule 76 operates only in respect of unalienated lands, whereas the suit lands were part of alienated villages. After the enactment of the Salsette Act 1951, Rule 76(2)(a) ceased to have any application, as land revenue was now to be paid to respondent no.3.

45. In the present case, from 1870 and in any case after the notification dated 16th July 1938 until 1983, neither the British Government nor the appellant asserted ownership or exercised proprietary rights over the suit lands. The appellant has not produced any contemporaneous record, notification, or revenue entry evidencing its ownership or control over the suit lands at any point of time. This completely negates the appellant's case on title. Similarly, the appellant's reliance on the Gazetteer of Bombay Presidency, which is only an administrative work to provide information and assist in local governance cannot be relied upon by the appellant to prove title. In any event, the

conveyances/ transfer deeds executed by various Eksali cultivators-who were tenants of the Grantee (Respondent No.1)-in favour of the predecessor-in-title of Respondent No.2, from 1928 onwards, are on record and marked as Exhibits 83 to 199 by the trial Court. The oral evidence of the appellant's witness (PW-1) further establishes that no objection was raised by the appellant in respect of these sale deeds.

46. The relevant portion of the appellant's witness's (PW-1) cross-examination is extracted below:

> *Paragraph no.5 (@page No.266 of Paper Book)*
> *"I am aware that on 25.03.2013 we have filed affidavit admitting the documents at Exh. 181 to 254 in evidence. Contents of my evidential affidavit are based on averment of the Plaint and those documents."*
>
> *Paragraph no. 6 (@page No. 266 of Appeal Paper Book)*
> *"The expression "Private Land and Purchase land", used in various documents has reference to (1) land purchased by Defendant No.2 (2) land purchased from private parties and (3) land sold by Government to defendant No.2. It is true to say that sale deed Exh. 83 to 181 are falling in one of the aforesaid categories. Plaintiff has never raised any objection or filed proceeding about those sale deeds till today. I do not know whether Plaintiff has initiated any proceeding or disputing those sale deeds."*

47. The appellant's claim surfaced only in 1983, and that too incidentally in the context of salt licence renewals. No explanation is forthcoming as to why the appellant did not assert its title over the suit lands for almost 113 years or atleast since the 16th July 1938 notification that was issued by the appellant's predecessor government under section 172 of the 1935 GOI Act. The defense of respondent nos.1 and 2 cannot be the basis for the appellant to establish its title.

Respondent no.3 (State of Maharashtra) has no title to the suit lands and its claim has been rejected by Courts including the Hon'ble Supreme Court of India.

48. Respondent nos. 3 to 5 have been represented by advocates before the trial Court as well as before this Court. No Written Statement was filed before the trial Court nor has the learned Additional Government Pleader advanced any submissions before us. As regards competing claims of the respondents to the suit lands, Respondent no.3 had, in the past, claimed title against respondent nos. 1 and 2, but lost in all proceedings. The historical record is overwhelmingly in favour of respondent no.1 as evident from the following undisputed facts:

(i) The notification dated 19th December 1949 under Section 2(9) of the BTAL Act declared respondent no.1 as the "landholder". The dispossession of respondent no.1 and statutory assumption of its management by respondent no.3-State under Section 44 of BTAL Act proceeds on the basis that the lands were private estates and not the property of the appellant. Had the suit lands belonged to the appellant, the Provincial Government/respondent no.3 may not have exercised powers under the BTAL Act. Be that as it may, this action of respondent no.3 resulted in litigation and after a decree was passed in Suit no.123 of 1955 in favour of respondent no.1, respondent no.3 reversed its actions and

returned the possession to respondent no.1 on 1st October 1957.

(ii) The Salsette Act subjected the suit lands to land revenue and by an order dated 5th September 2008, respondent nos. 3 and 4 recognized respondent no.1 as the land-holder/ superior-holder of the suit lands. All challenges to this order including up to the Hon'ble Supreme Court have failed, affirming this position.

(iii) The order dated 8th October 2010 of respondent no.5 refers to the judgment of this Court dated 27th January 1988 and after noting that respondent no.3 had not filed any written statement, held that title of respondent no.3 had passed to respondent no.1. As this order is not challenged by respondent no.3, this has also attained finality at least *vis-à-vis* respondent no.3.

49. Thus, respondent no.1 has been held to be the owner of the suit lands *qua* respondent no.3. In view of the above executive and judicial decisions, the appellant cannot contend that since respondent no.3 is not the owner of the suit lands, as a corollary, the title to the same will vest in the appellant.

Conduct of the appellant and the admission of its witness (PW-1) on the lack of title

50. It may be noted that during the course of cross-examination, the appellant's witness Harikrishna Agarwal

(PW-1) admitted that the suit lands are private lands. PW-1 also admits that no steps were taken to assert the appellant's title under the above-mentioned statutory provisions. The relevant portion of PW-1's cross-examination read as under:

> Paragraph no.10 (@ page no. 268 of the paper-book)
> *"It is true to say that sanction under Exhibit 194 was given on 9th May 1939 i.e. after coming into force of Government of India Act, 1935. It is true to say that said Act came into force in the year 1937. It is true to say that the then Federal or Provincial Government or Revenue Authority or Collector Salt had not laid any claim over the privately purchased land in the Manek Mira Salt Work. I do not know whether those authorities including plaintiff had invoked Article 172 of the Act of 1935 or Rule 76(2a) of Bombay Land Revenue Rules, 1921. However, no document in our possession to show that above said authorities had invoked Article 172 of the Act of 1935 or Rule 76(2a) of Bombay Land Revenue Rules, 1921. I have not seen come across any such order passed by any of aforesaid authority in 1939. It is true to say that the object behind bifurcation of Mira Salt Work in two divisions i.e. Shapur Salt Work and Manik Mira Salt Work was to maintain distinction between the land given on lease to defendant no.2 and the land privately owned by defendant no.2."*
>
> Paragraph no.42 (@ page no. 283 of the paper-book)
> *"Now, I have seen Exhibit 192. It is true to say that in that notification property reserved for Federal purposes have been notified. I do not know there is no other list of the properties for Federal purposes like that. Suit properties are not falling with the sweep of that notification. I do not know if the lands belong to Central Government are exempted from revenue assessment and payment. I never come across like situation. I do not know whether suit property was subjected to land revenue."*

51. The learned senior counsels for respondent nos.1 and 2 have referred to this evidence to show that even PW-1 has admitted to the lack of title of the appellant. While the mere oral evidence of a witness cannot divest title, the evidence of PW-1 is one more factor in testing the credibility of the appellant's claim. The appellant has not produced any notification which shows the vesting of the suit lands in its favour or that the appellant exercised control/ possession/

ownership over the suit lands at any point of time. Even after the 1935 GOI Act, the appellant (Union of India) admittedly did not invoke section 172 of the said Act or any other statutory provisions to assert or claim proprietary title over the suit lands. Thus there was no contemporaneous act of vesting, no notification, no administrative order, nor any assertion of ownership, no entry in any government records that would indicate the appellant's title to the suit lands. Had title in fact vested by operation of law, the appellant would necessarily have exercised asserted dominion and ensured such ownership is duly reflected in the official records. The appellant's failure to do so also negates the appellant's claim on title.

52. The learned ASG has relied upon the decision of the Hon'ble Supreme Court in *Ambika Prasad Thakur* to contend that the admission of PW-1 cannot divest the appellant of its title in the suit land. In *Ambika Prasad Thakur,* the trial Court had decided the issue of title in the favor of the plaintiff on the basis of *inter alia* admission of one of the defendants. It was held that the admission was made under suspicious circumstances and the written statement of the said defendant was never formally amended. Considering the surrounding circumstances, the admission was held to be having a weak evidentiary value. Further, the plaintiff did not claim the tenancy rights either by an express grant or by adverse possession. In this background, the Hon'ble Supreme Court held that the title cannot pass by mere admission. The Hon'ble Supreme Court held as follows:

"13. *On the question of title also, the plaintiffs must fail. In the plaint, the basis of their claim of title was (a) occupation of 426 bighas. 18 kathas and 9 dhurs of Dubha Taufir by their ancestor Naurang Thakur as occupancy tenant and the record of his rights in the survey papers of 1892 and (b) the oral arrangement with the Dumraon Raj. The first branch of this claim is obviously incorrect. The survey papers of 1892 do not record occupancy tenancy rights of Naurang Thakur in 426 bighas, 18 kathas and 9 dhurs. In the High Court, counsel for the plaintiffs conceded that in the Khasra of 1892-1893 survey the plaintiffs branch was recorded as tenant for about 19 bighas only. The oral arrangement is not established, and the second branch of this claim also fails. The Subordinate Judge did not examine the basis of the plaintiffs claim of title. His finding in favour of the plaintiffs' title was based chiefly on (1) oral evidence. (2) depositions of witnesses in previous litigations, (3) possession, (4) an admission of the Maharaja. The oral evidence on the point is not convincing. The claim is not supported by the documentary evidence. The survey papers of 1892, 1895, 1904, 1909 and 1937 do not support the plaintiffs claim of occupancy rights in the lands in suit. The depositions of witnesses in other litigations do not carry the matter further. The deposition of Defendant 11, Ram Dass Rai, in Suit No. 217 of 1911 is of weak evidentiary value. Though admissible against him as an admission, it is not admissible against the other defendants. The other depositions relied upon do not satisfy the test of Section 33 of the Indian Evidence Act. and are not admissible in evidence. We have already found that the plaintiffs and their ancestors were not in possession of the disputed land since 1909. The oral evidence as to their possession before 1909 is not convincing, and we are not inclined to accept it. The documentary evidence does not support the story of their possession before 1909. With regard to the admission of the Maharaja in Suit No. 247/10 of 1913 relating to the plaintiffs' title to 244 bighas, we find that in his written statement the Maharaja asserted his khas zeraiti rights and denied the alleged guzashta kastha rights of the plaintiffs' ancestors. It seems that in Bihar 'guzashto kasht' means a holding on a rent not liable to enhancement, Later, on 10-06-1913, a petition was filed on his behalf stating that the plaintiffs' ancestors were tenants in occupation of the disputed land having guzashto kasht rights. The Maharaja was interested in the success of the suit, and it was necessary for him in his own interest to make this admission. The admission was made under somewhat suspicious circumstances at the end of the trial of the case when the arguments had begun. Though this petition was filed, the written statement of the Maharaja was never formally amended. In the circumstances, this admission has weak*

> *evidentiary value. In this suit, the plaintiffs do not claim tenancy right either by express grant or by adverse possession. Title cannot pass by mere admission. The plaintiffs now claim title under clause (1) of Section 4 of Regulation 11 of 1825. The evidence on the record does not establish this claim."*

53. We find no such circumstance in the present case. The admission by PW-1 is categorically recorded in his cross-examination and admits of no ambiguity whatsoever. However that is not the sole or even the primary basis upon which the trial Court has returned its finding on the issue of title. The trial Court's determination is based on appreciation of documentary evidence placed on record by the parties and the statutory provisions.

Non-adjudication of prayer clause (b) in the suit by the trial Court is not fatal

54. The appellant lastly contends that the trial Court failed to adjudicate its challenge to the order dated 18th November 2002 passed by respondent no.4 as also the order passed by respondent no.5 on 8th October 2010. We find no merit in this submission. The challenge to the aforesaid orders is completely dependent on the appellant establishing its title under Issue no.1. The foundation of prayer (b) is the appellant's asserted ownership and is subsumed in Issue no.1. Once the appellant's principal claim of ownership fails, the appellant's challenge to orders passed by respondent nos.3 and 4 becomes academic. The heading of section 20 of 1966 MLRC reads "Title of State in all lands, public roads etc., which are not property of others". The determination under section 20 therefore relates to a claim which is not the property of others and

therefore belongs to the State. In the present case, respondent no.3 has accepted the determination in favour of respondent nos.1 and 2, including under Salsette Act. It is not the appellant's claim that respondent no.3 has the title in the suit lands and therefore it is imperative to adjudicate prayer (b). In any event, under Order XLI Rule 24 of CPC, the appellate court may sustain the decree on any ground borne out by record. It enables the appellate Court to dispose of the matter finally without a remand if there is sufficient evidence on record, notwithstanding that the appellate Court proceeds on a ground different from what the trial Court has proceeded. In our view, prayer (b) of the suit does not survive independently. An order of remand cannot be passed in a routine manner as it elongates the life of the litigation without serving the cause of justice. Remand of the matter only for prayer (b) is neither necessary nor warranted in this case since we find that the long course of legislative recognition and judicial adjudication supports respondent no.1's status as a superior holder.

55. The learned ASG's reliance upon a judgment of the learned Single Judge of this Court in the case of *"Union of India v. Alark Laxman Desai"* is also misplaced. By an order dated 25th March 1996 passed in Civil Appeal No.6743 of 1996, the Hon'ble Supreme Court had directed the parties to approach the Competent Authority under the Code for adjudication on the issue of title of the land. The question that arose before the Court was whether such a direction, requiring the parties to avail the statutory remedy before

the Competent Authority, had the effect of foreclosing their right to subsequently challenge any order passed by the Competent Authority by way of a civil suit under section 20 of the 1966 MLRC. This Court answered the said question in the negative and held that the direction to approach the Competent Authority did not extinguish or foreclose the parties' right to institute a civil suit under section 20 to challenge any order that may be passed by the Competent Authority. In arriving at this conclusion, this Court observed as follows:

> *"35. To summarize, the Apex Court directed the parties to approach the Competent Authority under the Code for adjudication of their grievance. The Respondent approached the Competent Authority under Section 20(2) of the Code. The order passed by the Apex Court did not foreclose the right of the parties after the order is passed by the Competent Authority, as available in law. Section 20(4) itself refers to filing of a suit to challenge orders passed under Section 20."*

56. However in the present case, it has become inconsequential as the issue of title has been decided against the appellant. Even if the suit is remanded to the trial Court for adjudication of prayer (b), the end result will still be the same as the appellant has not been able to independently establish its title. Thus, the reliance placed on this decision of "*Alark Laxman Desai"* is misplaced. Reliance on the decisions in *"Jagdish Hari Thatte"* and *"Sathyanath"* also does not assist the appellant. The said judgments lay down the well settled principles under Rule 2 of Order XIV which mandate the trial Court to pronounce judgment on all issues notwithstanding that a case may be disposed of on a preliminary issue. The rule also lays down that the Court may try the issue of law first if it is of

opinion that the case or any part thereof may be disposed of on such issue. In *"Jagdish Hari Thatte"*, this Court was only considering the question as to whether it is necessary for the Court to decide on all issues on merits if it comes to the conclusion that it lacks jurisdiction, at the time or before passing an order of the return of plaint. Similarly in *"Sathyanath"*, the trial Court only considered issue relating to *res judicata* and limitation as preliminary issues while passing an order under Order VII Rule 11 for rejection of plaint. That is not so here. The trial Court in the impugned judgment framed eight issues. In the present case, the appellant had the recourse of Rule 5 of Order XIV to move an application in the trial Court seeking framing of additional issue regarding the legality of the order dated 18th November 2002 passed by respondent no.4 as also the order passed by respondent no.5 on 8th October 2010. The appellant did not do so. It is not the case of appellants that the Issues were not framed properly. The trial Court has recorded findings on all of the eight issues framed. The trial Court held that the appellant had failed to establish its ownership over suit properties and thus it is not entitled to claim consequential relief of claiming the possession of the suit property. Thus, the mandate under Rule 2 of Order XIV of CPC has been discharged. Considering the same, there is no infirmity in the impugned judgment on the ground of purported failure of the trial Court to adjudicate upon prayer clause (b).

57. In conclusion, we find that the trial Court has rightly held that the appellant has failed to establish its title.

Consequently, First Appeal no.1430 of 2019 is dismissed. There shall be no order as to costs.

58. After the judgment was pronounced, a prayer has been made by Mr. Anil Singh, the learned Additional Solicitor General for continuing the *status quo* order dated 2nd September 2021 passed in Interim Application (St) No. 97107 of 2020 with Civil Application No. 384 of 2019. In a judgment passed in this First Appeal which arises out of a dismissed suit, there cannot be an order for continuing of the *status quo* order as requested on behalf of the appellant-Union of India. The prayer is, accordingly, rejected.

[GAUTAM A. ANKHAD, J.] **[CHIEF JUSTICE]**