
(2000) 03 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23232 of 1995 and Batch

A.P. Housing Board, Hyderabad

APPELLANT

Vs

Mohammed Sadatullah and others

RESPONDENT

Date of Decision : 29-03-2000

Acts Referred:

Andhra Pradesh Housing Board Act, 1956 — Section 22A
Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2, 3, 5, 7, 8
Constitution of India, 1950 — Article 14, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 263, 264, 265
Urban Land (Ceiling and Regulation) Act, 1976 — Section 6

Citation : (2000) 3 ALD 429 : (2000) 3 ALT 46

Hon'ble Judges : N.Y. Hanumanthappa, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : M/s. A.H.T. Ramloo, S. Srinivasa Reddy, Panduranga Rao Kulkarni, P. Saibab, K.M. Mahender Reddy, J. Prabhakara Rao, C.V. Mahender Reddy and Government Pleader for Revenue, for the Appellant;

Judgement

N.Y. Hanumanthappa, J.—All the writ petitions have been filed to quash the judgment and decree dated 4-9-1995 passed in LGC No.137 of 1989 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad (for short the "Special Court").

2. WP No.23232 of 1995 is filed by the A.P. Housing Board (Respondent No.22 in LGC). WP No.22580 of 1995 is filed by one P. Abraham (Respondent No.4 in LGC). WP No.8797 of 1996 is filed by R. Hemalatha, G. Venkateswarlu and Smt. D. Venkayamma (Respondents 34 to 36 in LGC) and WP No.9565 of 1996 is filed by all the 4 applicants in LGC.

3. Since all the writ petitions arise out of same judgment and the point involved is one and the same, they are heard together and disposed of by a common order.

4. For purpose of convenience the parties are referred as arrayed before the

Special Court.

5. A few facts which are necessary to dispose of these writ petitions are as follows: Applicants 1 to 3 are the sons and applicant No.4 is the wife of late Farhatulla, Late Farhatulla owned an extent of Ac.45.0 in S. Nos.45 to 48 of Yousufguda village in the limits of Golkonda Mandal. The said extent was acquired by the Government for the beneficiary, namely the A.P. Housing Board, but the authorities could take possession of Ac.43.00 leaving Ac.2.00 as it was occupied by the hut dwellers. Award was passed and compensation was paid in respect of the land taken possession of and compensation of Rs.50,000/- in respect of Ac.2.00 was deposited in the Treasury with a view to pay the same to the hut dwellers after their eviction. The said Ac.2.00 is the subject matter of the land grabbing case.

6. It is the case of the applicants when they approached the Municipal Corporation of Hyderabad with a request to sub-divide Ac.2.00 land and approve the layout, the Corporation directed them to obtain No Objection Certificate from the Housing Board as it was covered by an award. Aggrieved by this the applicants filed WP No.4194 of 1988 seeking a direction to direct the Corporation to approve the layout without insisting for No Objection Certificate which was allowed on 8-12-1988. While so the respondents except respondent 22, who are organised land grabbers started infiltrating into the land and raised unauthorised structures. It is the further case of the applicants that A.P. Housing Board (R22) has no right in the petition schedule land. It had put up a fencing around a portion of the schedule land and when they were planning for initiating civil proceedings against the Housing Board, it got impleaded in the LGC. As such the Housing Board is also liable to vacate the said portion and the structures to be removed.

7. The case of the respondents 1 to 3 in their counter is that the petition schedule land has been in possession of" their forefathers and under their cultivation since times immemorial. In fact their long possession over the schedule land was also recognised by the Land Acquisition Officer in his proceedings stating that huts were in existence since 45 years. As such, they have perfected their title by adverse possession. They filed OS No.1550 of 1985 on the file of the IV Additional Judge, City Civil Court, Hyderabad and obtained interim injunction against the applicants from interfering with their possession. They have applied for layout to the Corporation and constructed house in the schedule land. At the time of construction when the Corporation authorities raised objections, they filed WP No.29886 of 1986 and obtained stay. Many dwellers in the schedule land were paying land revenue. Even late Farhatulla and the 1st applicant herein admitted in other proceedings that they had no title deeds in respect of the schedule land. Since these respondents and their predecessors-in-title have perfected title by way of adverse possession over the schedule land they cannot be termed as land grabber.

8. The case of 4th respondent is to the effect that Raja Lakshmana Rao, the

Jagirdar of Yousufguda village gave Ac.5.00 of land in S. No.45 including the petition schedule land to his father P. Venkaiah in the year 1940 and since then his father was cultivating the land raising dry crops by paying land revenue. Subsequently, the said Jagirdar granted patta in favour of his father Venkaiah who died long back. According to this respondent, there is an Urdu document granting patta to his father. As he is the owner of Ac.5.00 he cannot be termed as land grabber and as has been in possession of the same since the time of his father, he is entitled for patta rights under respondent 2 of the Rules regarding the grant of pattadar rights in Khalsa village.

9. The case of the respondent Nos.5 and 6 was that they purchased an extent of 1700 sq. yards in the schedule land along with structures surrounded by a compound wall and they constructed houses after obtaining permission from the MCH. Yousufguda village is an ex-jaghir village of Lakshmana Rao. According to them though it was stated that the applicants and late Farhutullah purchased the land they did not file the sale deed. If the petition schedule land belongs to late Farhutullah, it should have been shown in the declaration u/s 6 of the Urban Land Ceiling Act as it was included in the municipal limits long back. The respondents alleged that late Farhatullah worked as Collector in the Revenue Department and in his capacity he manipulated the revenue records in his favour. The respondents also pleaded adverse possession on the same lines as pleaded by 4th respondent. According to these respondents, even if Farhatulla or the Government had any title over the schedule land, their rights got extinguished.

10. The 8th respondent adopted the stand taken by the 1st respondent. It is the case of the respondent 12 in his counter that he purchased an extent of 577 sq. yards with a house bearing D. No.8-3-201/2/A situated in Bharatnagar Colony which is a portion of the schedule land under a registered sale deed dated 14-12-1984 from 8th respondent, He adopted the counter of R5 and R6 in respect of other contentions.

11. R14 and A15 filed counter contending that they purchased 279 sq. yards, a portion of the schedule land in Bharat Nagar colony under a registered sale deed dated 11-4-1986 from one Kurupaiah who was the owner by virtue of his long possession and occupancy rights. Since the date of their purchase, they have been in possession of the same. They also filed OS No.1721 of 1986 on the file of the IX Assistant Judge, City Civil Court, Hyderabad against one Koteswara Rao when he tried to interfere with their possession and obtained interim injunction.

12. It was the case of R16 in his counter that he purchased an extent of 450 sq. yards from out of the petition schedule land under a registered sale deed dated 4-3-1985 from P. Chandraiah who had occupancy rights. He claimed adverse possession through the said Chandraiah.

13. The stand of R17 and R18 in the counter was that they purchased 279 sq. yards each which is a portion of the schedule land under a registered sale deed dated 11-4-1986 from Kurupaiah and they claimed their title by way of adverse

possession through the said Kurupaiah as claimed by R14 and R15. They also filed OS No. 1721 of 1986 on the file of IX Assistant Judge, City Civil Court, Hyderabad when Koteswara Rao tried to interfere with their possession. R19 took the similar stand taken by R15 and R16.

14. It was the case of R34 and 35 in their counter that they purchased a house bearing No.8-3-206 which is an extent of 540 sq. yards, a portion of the schedule land from P. Francis under a registered sale deed dated 30-4-1985 and since then they have been in occupation. They stated that in their absence, the 22nd respondent-Housing Board demolished the structures and constructed a compound wall in the year 1992 which is illegal. Therefore they are entitled to get back their property from R22.

15. R36 filed counter stating that he purchased 800 sq. yards of land with a house bearing D. No.8-3-194/2 which is a portion of the schedule land from one M.P. Jeevaratnam under a registered sale deed dated 30-4-1985 and since then he has been in possession and enjoyment of the same. He also sought recovery of his property from R22 as contended by R34 and 35.

16. The case of the R22-Housing Board in its counter was that it is the absolute owner and possessor of the land covered by Award No.5 dated 31-12-1971. As per the award, the compensation in respect of the petition schedule land was deposited to be paid to Farhatulla, the pattadar. This Court in WP No.4194 of 1988 dated 8-12-1988 held that the award to the extent of Ac.2.00 is illegal against which the Housing Board filed an appeal which is pending. Hence it cannot be said that the order in the writ petition has become final. In WP No. 1802 of 1991 filed by Indira Nagar Hut Dwellers Association, Yousufguda, against the Housing Board, this Court directed the Association to approach the civil Court for appropriate relief. The area within the fencing is in occupation of the Housing Board belongs to it. Neither the applicants nor any other respondents have any title over the same. The petition schedule land and the land in respect of which WP No.4194 of 1988 was filed are different.

17. On the basis of the above pleading, the Special Court framed the following issues:

- (1) Whether the applicants are the owners of the petition schedule land?
- (2) Whether the respondents perfected their title over the petition schedule land by adverse possession?
- (3) Whether the respondents are land grabbers within the meaning of the Act?
- (4) Whether the applicants are entitled for compensation and if so what amount?
- (5) To what relief?

Additional Issue framed on 15-10-1992:

- (1) Whether R22 is the owner of the petition schedule land as contended by it?

Additional issue framed on 1-12-1992:

(1) Whether R1 to R21 have acquired the Patta Rights over the petition-schedule land under the Rules regarding the granting of pattadari rights by the Jagirdar of Yousufguda village in non-Kalsa villages as pleaded in their counter and if so what is the effect of those rights in this case?

18. Since the Special Court held that only respondents 4, 5 and 6 are entitled to continue in possession of the schedule property to the extent of 770.55 sq. yards by R4 and 1699 sq. yards by R5 and R6 and the A.P. Housing Board did not take possession of the area measuring Ac.2.00, once again it is proper to mention some of the observations made by the Special Court both on Issue Nos.1 and 2 and Additional Issue framed on 15-10-1992.

19. According to the Special Court, the petition schedule land measuring to an extent of Ac.2.00 in S. No.45 of Yousufguda village bounded by North 60 feet road, which was proposed to be widened as 80 feet road, and by the Housing Board Colony on the other three sides. According to Ex.A1, the acquisition proceedings initiated at the instance of the Housing Board are illegal. The Special Court found that though the Housing Board acquired an extent of Ac.13.36 guntas in S. No.45 and award was passed under Ex.A2, dated 31-12-1971, the Housing Board could not take possession of Ac.2.00 in S. No.45 in view of the huts existing on the said land. The compensation deposited in respect of Ac.2.00 was ordered to be paid to Farhatulla after eviction. The award under Ex.A1 was held as illegal by this Court in WP No.4194 of 1988 (Ex.A1) on the ground that the Housing Board did not pay compensation for Ac.2.00 of land to Farhatulla even after expiry of 20 years from the date of award and the LAO cannot direct Farhatulla to evict the hut dwellers and deliver vacant possession to the Housing Board. The Special Court found discrepancy as to the identity of the property claimed by the applicants and the Housing Board. The Special Court took into consideration the request made in WP No.4194 of 1988 that the Commissioner of MCH, Ist respondent therein, be directed to sanction the lay out plan for sub-division of Ac.2.00 in S. No.45. The Court also found that the Housing Board did not dispute in WP No.4194 of 1988 the possession of some portion of the land by respondents 4 to 6. The Special Court observed that not even a suggestion was made to RW9 through whom Exs.A27 and A28 were marked. The Special Court found that the Housing Board did not deny in his counter filed in WP No.4194 of 1988 the correctness of Ex.A8. The identity of the property was shown with reference to Exs.A25 and A28 wherein existence of huts have been shown. As the Housing Board did not dispute the correctness of Exs.A25 and A28, the Court felt that the portion marked as "ABCDEFGH" in Ex.B35 plan filed on behalf of the Housing Board could not be taken possession by it. Thus in respect of that extent of land the award under Ex.A2 was held to be a nullity as per Ex.A1. The Special Court found that the evidence of RW8 supported that the Housing Board did not take possession of the area shown as "ABCDEFGH" in Ex.B35. The Special Court further held that the Housing Board is not the owner of the petition schedule

land. On the other hand, Farhatulla is the owner. The Special Court further observed that in view of documentary evidence at Exs.A1, A28 and B35 and the failure on the part of the Housing Board to produce sub-division sketch showing that the land was taken possession by it in pursuance of Ex.A2 award, proved that the Housing Board did not take possession of the schedule land.

20. Regarding the claim of respondent No.4 who claimed an area of Ac.5.00 in S. No.45 including the schedule land, but from the evidence produced, the Special Court found that the 4th respondent in possession of only 770.55 sq. yards for more than the statutory prior. Thus he has perfected his title by adverse possession over 770.55 sq. yards. Regarding the claim of respondents 5 and 6, placing reliance on Exs.B10 and 11 and B32, the Special Court found that the land covered under Exs.B10 and B11 shown within the area marked as "ABCDEFGH" in Ex.B35 is in possession and enjoyment of respondents 5 and 6 and they have perfected their title by adverse possession as they have been in possession for more than 12 years prior to the filing of the application in the year 1989. Regarding the claims of respondents 14, 16 to 18 and 34 to 36, the Special Court observed that it is unable to give a finding that they have perfected their title over the extents in their occupation which are said to have been purchased by them, as the identity of the property was not established by them.

21. Regarding issue No.3, the Special Court held that R4 to R6 are not land grabbers. On the other hand, they have perfected their title in respect of the land in their occupation shown in Ex.B35 for an area marked as ABCDEFGH. As far as other respondents are concerned the Special Court found that the applicants have not established that they are in possession of the land and, thus, refused to declare that the other respondents are land grabbers. It also found that R22 is not a land grabber. The Special Court held that the title in respect of sites covered under Ex.B5, 8, 9, 40, 41 sales is concerned, it is for the applicants and the vendees to establish their rights before the civil Court. With regard to compensation the Special Court held that the claimants are not entitled for any compensation. Accordingly, the application was allowed declaring that the applicants are the owners in respect of the petition schedule land which is shown as ABCDEFGH in Ex.B35 excluding an area in occupation of R4 to R6. The Special Court further directed the RDO to take steps to deliver possession of the said land by evicting R22 as required under Rule 15(2) of the Land Grabbing Act.

22. Aggrieved by the judgment and decree of the Special Court, the present writ petitions were filed.

23. The applicants (petitioners in WP No.9565 of 1996) attacked the judgment and order of the Special Court on the grounds that (i) Special Court erred in holding that the Housing Board is not the land grabber when it is in possession of the land belonging to the applicants; (ii) when the Special Court gave a finding that the Housing Board is in possession of the land in question which is deleted from the acquisition proceedings, it should have held that it is land grabber; (iii) The Special Court gravely erred in holding that the 4th respondent perfected his

title over an extent of 770.55 sq. yards by adverse possession; (iv) according to the applicants when the 4th respondent was shown in the acquisition proceedings as hut dweller, it is ridiculous to hold that he possessed such a huge extent. A hut dweller may be having 50 to 100 sq. yards in his possession; (v) The finding of the Special Court basing on Ex.B2 that R4 is one of the occupants of the schedule land, in the absence of supporting evidence is incorrect; (vi) the Special Court erred in holding that respondents 5 and 6 perfected their title by adverse possession over an extent of 1699 sq. yards when their predecessors-in-title were found as hut dwellers and they cannot pass on title to R5 and R6 on such a large extent. R5 and R6 did not adduce sufficient evidence nor they examined any person to prove their case; (vii) in the absence of sufficient evidence, to hold that the Housing Board is not a land grabber and respondents 4 to 6 have perfected their title by adverse possession, is quite incorrect. Thus urging, the applicants sought the writ petition be allowed.

24. The 4th respondent attacked the judgment and order of the Special Court on the grounds that (i) the finding of the Special Court that he is entitled to an extent of 770.55 sq. yard is contrary to the certificate issued by the Jagirdar wherein Ac.5.00 of land was given to his father in S. No.45 of Yousufguda village which fact was proved under Exs.B3 and B4; (ii) the Special Court gravely erred in not giving any specific finding on additional issue framed on 1-12-1992 which is a crucial issue to be decided; (in) the application filed in the LGC is defective in law as it does not bear the signatures of the applicants, original copy of GPA was not filed etc., (iv) the Special Court erred in basing its finding on Ex.B35 instead of taking into consideration Exs.B1 to B4; (v) ordering delivery of possession of Ac.2.00 land excluding the extents in his occupation and R5 and R6 in favour of applicants is unjust when he is in possession of the same for more than 60 years. Thus urging, he sought the writ petition be allowed setting the impugned judgment to the extent of Ac.5.00 in S. No.45 of Yousufguda village including Ac.2.00 of land and to declare him as pattedar of Ac.5.00 in the said survey number on the basis of patta rights granted by late Jagirdar Raja Laxman Rao.

25. The attack of Respondents 35 to 36 on the impugned judgment is that the Housing Board is not the owner of the schedule land. The observation of the Special Court that the respondents 35 to 36 may approach the civil Court to agitate their title is totally erroneous when it has jurisdiction. Special Court should have ordered delivery of possession under Exs.B40 and B41 to them. Thus contending they sought the writ petition be allowed setting aside the impugned judgment in so far it relates to holding that the Housing Board is not a land grabber and consequently to direct the Housing Board to deliver possession of the land covered under Ex.B40 and B41 to them.

26. The 22nd respondent-Housing Board filed WP No.2323 of 1995 challenging the findings of the Special Court contending that judgment of the Special Court is quite arbitrary and illegal. According to the Housing Board, by a notification u/s 22-A of the A.P. Housing Board Act published in the Gazette dated 5-8-1965, the

Board acquired Ac.44.19 guntas and 58 sq. yards situated in different survey numbers. Out of that land, Ac.15.36 guntas was situated in S. No.45 of Yousufguda village. In an area of Ac.2.00 trespassers put up huts. By an order dated 31-12-1971, the Special Deputy Collector ordered compensation for the acquired land. He held that Farhatttlla was the owner and entitled for 40% of the compensation and one Smt. Agamma is protected tenant entitled for 60% of the compensation. Though compensation was deposited to be paid to the owner, possession of Ac.2-00 could not be handed over. The Board referred to the proceedings in WP No.4194 of 1988. It admitted that it did not take steps to take possession of Ac.2.00 of land. The Housing also contended that it put up fencing throughout the land except that land which is in unauthorised occupation of respondents 4 to 6 and others. The Special Court committed a mistake in holding that none of the respondents is land grabber. It committed a mistake in holding that Farhatulla is the owner of the petition schedule land and the Housing Board is not the owner. It also challenged the finding of the Special Court that the Board did not take possession of the land whereas respondents 4 to 6 have been in possession of their respective extents in their occupation. When the Court found that none of the respondents is land grabber, it should have rejected the case of the applicants. When the Special Court held that the Housing Board is in actual possession as it traces the lawful origin of its title to the land acquisition proceedings, it should not have ordered the eviction of the Board. It was alleged by the Housing Board that there was an understanding among respondent Nos.4 to 6 to part with the schedule property acquired by the Housing Board. When similar applications were pending before the Competent authority denying the title of the respondents 4 to 6, the Special Court should not have embarked upon to consider the request of the applicants. It contended that the Housing Board took possession of the land acquired covered under the Ex.A2 Award excluding Ac.2.00. The Special Court did not consider the evidence in proper perspective. The Housing Board could not take possession of the land as some huts were in existence in the land.

27. According to the Housing Board, A.P.Act 12 of 1982 is discriminative as it offends Articles 14 and 21 of the Constitution of India. The special procedure directed to be followed under the provisions of the Land Grabbing Act is violative of the principles of natural justice. The definition of "land grabbers" and "land grabbing" is quite vague. The procedure contemplated under the Act is quite oppressive in nature. Section 10 of the Act has thrown the burden on the defendant to prove that he is not land grabber which procedure is contrary to the Civil Procedure Code. No appeal provision has been provided against the original order of the Special Court which is violative of Article 14 of the Constitution. There is an averment to the effect that the Special Court committed a mistake in entertaining the application when identical dispute was already adjudicated by the Competent Authority. The procedure contemplated under the Act suggests two parallel enquiries. Conferring powers both civil and criminal on the Special Court is illegal and violative of Article 14 of the Constitution of India. There

should not have been two Forums, namely Special Court and Special Tribunal with different procedures to be followed with different jurisdiction. Thus contending the Housing Board sought the writ petition be allowed and the impugned judgment of the Special Court be quashed.

28. The petitioners have requested the Court to hold that the findings given by the Special Court on all the issues as quite incorrect. According to them, the Special Court did not consider the evidence properly. On behalf of the applicants it was contended that when the Court found that the applicants are the owners of the land there should have been a declaration in respect of the entire land as the one belonging to them. To hold that R4 to R6 perfected their title in their respect portions in their occupation out of the schedule property, in the absence of any evidence is quite incorrect. When the Special Court found that the entire Ac.2.00 land which is fact was acquired by the Housing Board but possession could not be taken, the same should have been ordered in favour of the applicants or atleast that portion or atleast leaving so much portion which was alleged go have been occupied by others who perfected their title by adverse possession. On behalf of the Board it was contended that when the Court accepted that acquisition of the land is S.No.45 for the benefit of Housing Board it should have ordered that the entire disputed land shall go to the Housing Board. The Court committed a mistake in declaring that respondents 4 to 6 perfected their title in respect of their portions in their occupation. Appreciation of evidence by the Special Court is quite incorrect.

29. The learned Counsel for the 4th respondent contended that when it came in evidence that his father was given Ac.5.00 by virtue of grant that was made by jagirdar, he is entitled for Ac.5.00 which includes Ac.2.00, namely the schedule land and not 775 sq.yards. The Special Court committed a mistake in ordering only 770.55 sq. yards in his favour and the rest in favour of others in the absence of evidence and proof that the others"perfected their title by adverse possession.

30. R34 to R36 attached the judgement and decree of the Special Court contending that the Special Court failed to consider that they purchased different bits of land and have been in possession of the same since a long time. Even otherwise they have perfected their title by way of adverse possession for a period of more than 12 years as on the date of filing of the application.

31. Before giving a finding on the claim made by the applicants and the respondents 4, 5 and 6 and the 22nd respondent-Housing Board, it is proper to consider the statutory validity of Sections 7 and 8 of the A.P. Land Grabbing (Prohibition) Act, 1982 since there is a challenge to its validity. In order to hold whether a particular Act or provisions or a scheme or Rules is unconstitutional or violative of Article 14 of the Constitution or not, the Court has to look into the very object of the Act or Rules in question. Before the enactment of the Act, it was brought to the notice of the Government that systematic and organised attempts are being made by certain lawless persons individually or in groups to

grab the land belonging to the Government, a local authority, a religious or charitable institution or endowment, including wakf or any other private person, the land grabbers are forming bogus co-operative housing societies with a view to grab the land and hand it over to the developers who in turn form apartments or plots, but then for sale at high rates with a view to accumulating unaccounted wealth and thus depriving the needy persons of their chance to get a site at a lesser price. With a view to stop such unlawful activities of land grabbers, A.P. Land Grabbing (Prohibition) Act, 1982 has been introduced. Creating two special Forums to deal with the land grabbing matters is to see that the matters are settled in expeditious manner because if such issues are to be dealt with by the civil Court, it may take considerable time. Thus, on the one hand it avoids delay in deciding such cases and on the other it assures speedy recovery of the land so grabbed by virtue of powers, civil and criminal conferred on the Special Forum. Thus, indirectly the Special Court constituted under the Act on the one hand decide the title and ownership of a person and on the other hand if it is found that the land in question is grabbed unlawfully and continued to be in unlawful possession, the Special Court by exercising its special powers, can pass an order of eviction of such person even by force and also launches criminal proceedings.

32. Section 2 sub-section (d) defines "land grabber". Section 2 sub-section (e) defines "land grabbing". Section 3 of the Act declares that any land grabbing by any person in any form as unlawful and any activity therewith or arisen out of the said land grabbing is a offence punishable Section 4 of the Act prohibits a person from committing the act of land grabbing. Further, if any person continues to be in occupation even after the commencement of the Act in unlawful way of the land grabbed belonging to the others shall again be guilty of offence punishable under the Act. If any person contravenes the provisions of subsection (1) or sub-section (2) he shall be liable for conviction with a punishment of imprisonment for a term which shall not be less than six months but which may extend to five years and with a fine which may extend to five thousand rupees. Thus, even an abettor of land grabbing has been brought within the definition of land grabber. Section 5 of the Act speaks about the penalty of the offence in connection with land grabbing. Section 6 does not spare even the companies, if they grabbed the land, from the consequences of conviction and punishment. Section 7 of the act deals with constitution of Special Courts. To achieve the object of the Act, the Government can constitute the Special Court with the persons as mentioned in sub-sections (2) and (3) manned by a Chairman and other four members. Sub-section (5A) of Section 7 gives powers to the Special Court to make regulations in conformity with the provisions of the Act or the Rules made therein regarding the procedure to be followed to conduct the cases. Sub-section (5C) of Section 7 speaks about the placing of regulations before the Legislature for its approval. Sub-section (5D) (i) speaks about the Special Court to follow its own procedure and sub-section (5D) (ii) deals with the powers of the Special Court to try every offence punishable under the Act in a summary way and Sections 263 - 265 of Criminal Procedure Code as far as possible be made

applicable to the Special Court. Section 5(D) (in) deals with the powers to the Special Court that when it is found that a person committed an offence of land grabbing it shall order that possession of such land be restored to the owner after evicting by force, if necessary, any other person who may be in possession of the property.

33. Section 7-A deals with creation of Special Tribunals and their powers. This provision was introduced by way of amendment to the Act. The Special Tribunal gets power to try the cases whose cognizance was not taken by the Special Court relating to any alleged act of land grabbing or with respect to the ownership and title either before or after the commencement of the Act. If any case brought before it, prima facie, found a frivolous one, it shall reject the same without further enquiry. If the Special Tribunal finds that any case brought before it in its opinion is a fit case to be tried by the Special Court it may transfer the same to the Special Court by recording the reasons for such transfer. While holding enquiry, the Tribunal has to follow the procedure contemplated under the Code of Civil Procedure. Against the order of the Tribunal, an appeal lies to the Special Court on question of law, if such appeal is preferred within 60 days from the date of judgment and order of the Tribunal. While taking cognizance, the person concerned shall be heard in the matter. Like the Special Court, the Tribunal has got powers to award compensation in terms of money for wrongful possession. Before passing an order, it shall give an opportunity to the land grabber to make a representation or to adduce evidence, if any. The time limit fixed for disposal of the case before the Special Tribunal is six months. It has got all powers of a Civil Court.

34. Section 8 of the Act, sneaks about the procedure to be followed by the Special Court which reads as follows :--

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

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

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

(2) Notwithstanding anything in the Code of Civil Procedure, 1908 (Central Act 5 of 1980), The Code of Criminal Procedure, 1973, or in the Andhra Pradesh Civil Courts Act, 1972, (Act 9 of 1972) any case in respect of an alleged act of land grabbing or the determination of questions of title and ownership to, or lawful

possession of any land grabbed under this Act, shall subject to the provisions of this Act, be triable in the Special Court and the decision of Special Court shall be final...."

35. A reading of the above sections suggest that the object of creating Special Tribunal and Special Court, though similar the Special Court is conferred with more powers than the Special Tribunal, namely having appellate jurisdiction on the orders passed by the Special Tribunal and transferring of cases by the Special Tribunal to the Special Court in certain cases or vice versa. The Special Court is also conferred with the powers of Civil Court and the Court of Sessions.

36. The main attack of the learned Counsel for the Housing Board is that by constituting two different Forums a special treatment is given to the Special Courts, which is discriminatory. It is also his case that against the order of the Special Tribunal an appeal lies to the Special Court but no appeal lies against the orders of the Special Court. If a citizen who is aggrieved by an order of the Special Court, has no chance to approach another Forum by way of an appeal except approaching the High Court by invoking its special original jurisdiction under Article 226 of the Constitution, the scope of which is very much limited and the High Court cannot interfere with the findings of the Special Court unless there is an error apparent on the face of the record. Thus contending he submitted that Sections 7 and 8 are violative of Article 14 of the Constitution of India.

37. Before considering whether a particular provision is unconstitutional, we have to see whether sufficient proof has been placed and the allegations made in that context shall have a basis. Vague allegations are no material to show discrimination and the request to declare a particular provision as discriminative shall fail as held by the Supreme Court reported in *Ajoy Kumar Mukherjee Vs. Local Board of Barpeta*, .

38. When a provision in the statute is said to be unconstitutional, while dealing with the same, the Supreme Court in the case of *Dhirendra v. Superintendent & Remember of Legal Affairs* AIR 1954 SC 424 held as follows :-

"Now it is well settled that through Article 14 is designed to prevent any person or class of persons for being singled out as a special subject for discriminatory legislation, it is not implied that every law must have universal application to all persons who are not by nature, attainment or circumstance, in the same position, and that by process of classification the state has power of determining who should be regarded as a class for purposes of Legislation as a class for purpose of Legislation and in relation to a law enacted on a particular subject; but the classification, however, must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be achieved and cannot be made arbitrarily and without any substantial basis. The notification, in express terms, has not indicated the grounds on which this set of cases has been segregated from other set of cases falling under the same

sections of the Indian Penal Code. The learned Judges of the High Court however thought that this set of cases was put into one class because of their having the "common features that a mass of evidence regarding the genuineness of thumb impressions and regarding the existence or otherwise of persons required consideration and this was bound to take such a long time that it would be very difficult if not, impossible, for a juror to keep proper measure of the evidence".

39. In the case of M.K. Gopalan and Another Vs. The State of Madhya Pradesh, , the Supreme Court held that a law vesting some discretion in an authority cannot be termed as discriminatory so as to say the same hit by Article 14 of the Constitution.

40. When the classification is reasonable and based on intelligible differentia and discloses the object sought to be achieved, it cannot be said that such classification is unconstitutional as held by the Supreme Court reported in *Kangshari Haldar and Another Vs. The State of West Bengal*, .

41. In the case of *Shri Ramtanu Co-operative Housing Society Ltd. and Another Vs. State of Maharashtra and Others*, , the Supreme Court held that by virtue of introducing two Courts to decide the issue cannot be said that there is a procedural discrimination between the Maharashtra Industrial Development Act, 1961 and the Land Acquisition Act. The relevant portion is extracted herein :

"There is no procedural discrimination between the Maharashtra Industrial Development Act, 1961 (3 of 1962) and the Land Acquisition Act. The Maharashtra Industrial Development Act is a special one having the specific and special purpose of growth, development and organisation of industries in the State of Maharashtra. The Act has its own procedure and there is no provision in the Act for acquisition of land for a company as in the case of Land Acquisition Act. The Land Acquisition Act is a general Act and that is why there is a specific provision for acquisition of land by the State for public purpose and acquisition of land by the State for companies. Under the Land Acquisition Act acquisition is at the instance of and for the benefit of a company, whereas under the Maharashtra Act acquisition is solely by the State for public purposes. The two Acts are dissimilar in situations and circumstances. In the Maharashtra Act there is no restriction on the powers of the Collector in the matter of determination of compensation, although the approval of Government may be necessary in the Government interest."

42. The principles laid by the Supreme Court, in the case of *V.C. Shukla Vs. State through C.B.I.*, , and the Division Bench of this Court, in the case of *S. Srinivasa Rao v. High Court of A.P. and others* 1988 (2) ALT 685 supports the view already explained above.

43. The Supreme Court, in the case of *The State of Andhra Pradesh and Others Vs. K. Mohanlal and Another*, , while considering the scope of Section 7 of the Act held that the same is valid and constitutional and not violative of any of the Articles of the Constitution.

44. In view of the above discussion and the settled legal position, merely because two Forums have been created that does not mean in any way they are conflicting with each other and discriminative. On the other hand, the duty of both the Forums is to achieve the object that has been contemplated in the Act. Hence, Sections 7 and 8 are neither discriminative nor violative of Article 14 of the Constitution of India.

45. The scope to interfere with the findings of the Special Court by this Court under Article 226 of the Constitution is very much limited as held by the Division Bench of this Court in Mohd. Iqbal Vs. N. Prabhakar and Another, , wherein this Court held as follows :

"Article 226 of the Constitution of India to interfere with such finding of fact in other words, on finding of fact, when a finality has been reached by a Court, it is not open for judicial review under Article 226 of the Constitution. When similar question was cropped up before this Court in the case of Tadi Surya Rao Vs. Dr. Gurubhavatula Ramakrishna Rao and Another, a Division Bench of this Court held as follows :-

Before considering the rival contentions urged by the learned Counsel for both sides, we must restate the well accepted legal principles concerning the limits of the power of judicial review, since the matter at length has been argued by Sri Poornaiah, learned Counsel for the petitioner drawing our attention in extenso to the evidence endeavoring to convince us to take a view different from the one arrived at by the Special Court. As the questions determined by the Special Court attained finality by virtue of Section 8(2) of the Act, any enquiry by us of a nature akin to the exercise of appellate jurisdiction is plainly forbidden.

The celebrated passage from the judgment of Lord Ainslie v. Electricity Commissioners 1924 (i) KB 171 at 204 serves as the foundation in the modern times for the issue of a writ of certiorari.

"Wherever anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

The duty to act judicially may arise in varied situations and it is difficult to define precisely, the circumstances under which such duty may arise. Each case turns upon its own facts. Gajendragadkar, J. (as the then was) in Syed Yakoob Vs. K.S. Radhakrishnan and Others, , after reviewing the case law, has stated the legal position for issue of a writ of certiorari under Article 226 of the Constitution of India.

"A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals; these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise

of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order or whether the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is however no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of record can be corrected by a writ, but not an error of fact, however grave it may appear to be if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari "but" a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of Certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court."

Elaborating what is meant by an error apparent on the face of the record, the learned Judge held :

"Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record."

46. Stating that in judicial review, the Court is not concerned with the decision but with the decision making process. Lord Brightman held in *Chie Constable v. Evans* (3) (1982) 1 WLR 1155.

"Judicial review is concerned not with the decision but with the decision making process. Unless that restriction on the power of the Court is observed the Court will, in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

The permissible grounds on which the power of judicial review could be exercised were stated by Lord Diplock in *C.C.S.U. v. Minister for Civil Service* (4) 1985 AC 374 ; (i) illegality; (ii) irrationality; and (iii) procedural impropriety. Accepting the parameters for the exercise of the power of judicial review as held by the British Courts, our Supreme Court held in *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, :

"It is not within the purview of a Court to substitute the decision taken by a

constituted authority simply because the decision sought to be substituted is a better one."

47. Thus under Article 226 of the Constitution of India, this Court is neither a fact finding authority nor it has power to reappraise the evidence when we have been asked to decide legal issue under Article 226 of the Constitution. All that we have to see is whether there is any procedural illegality or irregularity or any violation of the statutory rights or denial of fundamental rights. From the material placed before us, it is difficult to hold the existence of any of the above circumstances in order to interfere. On facts also, the Special Court while discussing elaborately held all the points against the petitioner."

48. Apart from the limited scope to interfere with the orders of the Special Court, it is shown that R4 to 6 have been in possession of 770.50 sq. yards and 1699 sq. yards respectively. Thus they have perfected their title by adverse possession. Even on the date of acquisition it was shown that some huts were in existence including the portions in occupation of R4 to R6. The applicants and even the Housing Board were aware of their possession continuously for a period of more than 25 to 30 years. In other words more than the statutory period. Respondent Nos.4, 22 and 34 to 36 did not approach the Special Court for a relief against the applicants or others contending that they are entitled either for Ac.5.00, or Ac.2.00 or any other extent etc. On the other hand, before the Special Court they were respondents and against them the applicants sought a relief to declare them as land grabbers. Before the Special Court they took a defence that they are not land grabbers. On the other hand, they are the owners of the entire extent of schedule land and even more in case of the 4th respondent, namely to an extent of Ac.5.00. But the Special Court considering the oral and documentary evidence, particularly Exs.B10 and B 11 held that the 4th respondent is in possession of 770.55 sq. yards, whereas respondent Nos.5 and 6 are in possession of 1699 sq. yards from out of Ac.2.00 of the petition schedule land. The object of the Land Grabbing (Prohibition) Act is to determine the land grabber and hand over the land so grabbed to the lawful owner. This is a special Act. In the said Act there is no provision for counter claim. If any party against whom all allegation of grabbing is made wants to set up a separate claim, the Forum is altogether different. Ignoring this, respondents 4, 22 and 35 to 36 filed WP Nos.22580 of 1995, 23232 of 1995 and 8797 of 1996. The case of respondents 34 to 36 is different from that of respondents 4 and 22. According to them they purchased some portions of the petition schedule land from third parties and in possession of the same and as such they are entitled to recover the same from the 22nd respondent. But in the writ petition they did not claim land more than the land alleged to have been grabbed by them. The case of respondents 4 and 22 is that they are the owners of the schedule property and as such they shall be declared as the owners of the said property. If their contention is accepted, then it is difficult for this Court to exercise the powers under Article 226 of the Constitution of India. If the averments made in the writ petitions and the prayer sought are understood properly they suggest that the

relief sought is against the private persons and Article 226 is not a proper Forum. In our view, the writ petitions filed by these respondents are misconceived. If respondents 4 and 22 still feel that they are entitled for the whole extent as claimed in the writ petitions, it is proper for them to agitate the same by initiating separate proceedings before appropriate Forum. In such an event, it is observed, such Forum shall consider their case on merit taking into consideration the evidence made available but uninfluenced by the observations made either by the Special Court or by this Court in these writ proceedings in respect of the claim of these respondents. All other contentions are kept open.

49. For the reasons stated above, WP No.22580 of 1995 filed by Abraham, 4th respondent in LGC and WP No.23232 of 1995 filed by the A.P. Housing Board, 22nd respondent in LGC are dismissed as misconceived. Whereas WP No.8797 of 1996 filed by Smt. R. Hemalatha, G. Venkateswarlu and Smt; D. Venkayamma, respondents 34 to 36 in LGC and WP No.9565 of 1996 filed by all the applicants in LGC are dismissed as no merit. There shall be no order as to costs.