

(2007) 10 AP CK 0040
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3200 of 2005

D. Appa Rao and Others

APPELLANT

Vs

Peela Krishna Appa Rao and Others

RESPONDENT

Date of Decision : 26-10-2007

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 8(8)
Civil Procedure Code, 1908 (CPC) — Section 24
Constitution of India, 1950 — Article 141

Citation : (2008) 1 ALT 462

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : D.V. Sitharam Murthy, for the Appellant; N.P. Anjana Devi and P. Satyanarayana, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This Civil Revision Petition has been preferred by the respondents 2 to 6 and 8 to 27 in Transfer O.P. No. 1209 of 2004 on the file of the District Judge, Viskhapatnam.

2. The respondents 1 to 4 herein are the petitioners in the transfer O.P. The petitioners in the said T.O.P. are the plaintiffs in O.S. No. 65 of 1999 on the file of IX Additional District Judge (Fast Track Court), Visakhapatnam, for declaration of title and recovery of possession of the suit schedule property.

3. The vendor of the plaintiffs filed Land Grabbing Case No. 6 of 2000 on the file of the Principal District Court-cum-Land Grabbing Tribunal, Visakhapatnam and it is pending. O.S. No. 65 of 1999 was pending on the file of IX Additional District Judge, Visakhapatnam. During pendency of those matters, the plaintiffs filed the said T.O.P. before the District Judge, Visakhapatnam u/s 24 of C.P.C to withdraw O.S. No. 65 of 1999 from the Court of IX Additional District Judge (Fast Track Court), Visakhapatnam and to transfer the same to the Principal District Judge-cum-Land Grabbing Tribunal, Visakhapatnam to try and dispose of the same

along with L.G.C. No. 6 of 2000 pending on the file of the said Court.

4. The District Judge allowed the said petition by ordering transfer of O.S. No. 65 of 1999 from the Court of IX Additional Principal Judge to the Court of Principal District Judge, Visakhapatnam. Being aggrieved by the same, the respondents 2 to 6 and 8 to 27 in the T.O.P. preferred the present revision petition challenging the transfer of the matter contending that the District Judge has no power to transfer the suit from the Court of IX Additional District Judge to his Court, therefore, the order is liable to be set aside.

5. The learned Counsel for the revision petitioners submitted that the District Judge, as a Special Tribunal for A.P. Land Grabbing (Prohibition) Act, 1982, cannot order transfer of the suit from the Court of IX Additional District Judge to his file for disposal along with L.G.C. No. 6 of 2000. In support of his contention, he relied on the following judgments rendered by this Court.

6. In *Dr. V. Rajeshwar Rao Vs. State Govt. of Andhra Pradesh and Others*, a learned single Judge of this High Court held that as per the Scheme of the Act, it is only in respect of such acts, the Tribunal constituted thereunder gets jurisdiction and possibly the Civil Court loses its normal jurisdiction. Even otherwise, the jurisdiction of common law Courts cannot be deemed to be ousted in regard to serious questions of title and such other incidental matters.

7. In the case covered by the above decision, the suit was filed by the Government in the concerned Civil Court for declaration of title and injunction or alternatively for possession of the suit schedule lands on the ground that they are government lands. During pendency of the matter, the Government filed an application in the suit to transfer the suit to the Special Tribunal constituted under the Land Grabbing Act. The High Court held that the jurisdiction of Civil Courts is not ousted if serious questions of title are involved. In the absence of any case of land grabbing, the Government cannot invoke the provisions of the Land Grabbing Act. In the case covered by the above decision, there is not only a bona fide dispute of title, but also a serious dispute of title. Therefore, the Court below transgressed its limits in ordering transfer of suit to the Special Tribunal under the Act, in spite of the judgment of the Supreme Court, which is binding precedent under Article 141 of the Constitution of India. The provisions of the Land Grabbing Act are not attracted to the said case, as the Civil Court has jurisdiction to entertain the suit and decide the questions of title to the suit property.

8. In *Dr. V. Rajeshwar Rao Vs. M. Yadagiri Reddy and Others*, a question regarding the competence of the Land Grabbing Special Court to direct transfer of the suit pending on the file of the Civil Court for adjudication has been considered by a Division Bench of this Court and held as follows:

The Special Court undoubtedly has all theappings of a Civil Court. The provisions of the Code of Civil Procedure, as are not inconsistent with the provisions of the Act, are made applicable to the proceedings before the Special

Court. There is no other provision under the Act, which enables the Special Court to direct the transfer of the cases pending before the Civil Courts which have been instituted subsequent to the advent of the Act and establishment of the Special Court or the Special tribunal, as the case may be. Section 24 of the CPC which enables the District Court to withdraw a case pending before any subordinate Court and transfer the same any other subordinate Court or to its file. Section 24 of the CPC cannot be invoked by the Special Court although it has all theappings of a Civil Court. Therefore, but for the provisions of Sub-section (8) of Section 8 of the Act, it is not well within the competency of the Special Court to direct the transfer of a case which is pending before a Civil Court for adjudication having been instituted far subsequent to the advent of the Act and establishment of the Special Court/Special Tribunal. Even the District Court cannot withdraw a suit pending before any other subordinate Court and direct the transfer of the same to the Special Court since the jurisdictions of the Special Court and the District Court are mutually exclusive. One cannot be said to be the Subordinate Court to the other.

9. In the case covered by above decision, the writ petitioner is the first respondent in T.O.P. No. 5 of 2004. The writ petitioner filed O.S. No. 48 of 1990 on the file of the District Munsif, East and North, Ranga Reddy District seeking relief of permanent injunction. Later, it was numbered as O.S. No. 218 of 2000 on the file of I Additional District Judge, Ranga Reddy, on account of pecuniary jurisdiction. The fourth respondent herein filed L.G.C. No. 2 of 1994 on the file of the Special Court, wherein the writ petitioner though initially was not arrayed as respondent, had subsequently been impleaded as a party thereto. It appears, some other matters are also pending before the Special Court filed either by the State or by the Osmania University in respect of the land situated in Survey No. 10/02 of Habsiguda village. The respondents 1 to 6 filed T.O.P. No. 5 of 2004 before the Special Court u/s 8(8) of the Land Grabbing Act seeking transfer of O.S. No. 218 of 2000 from the Court of I Additional District Judge Ranga Reddy to the file of the Special Court. The Special Court allowed the application directing the transfer of suit. When that transfer order was assailed, the above order was passed by a Division Bench. Though there is no dispute regarding the principle laid down by the Division Bench, the order was passed by the Special Court for Transfer of the matter from the Civil Court to the Special Court.

10. In the present case, the civil suit was pending before the IX Additional District Judge and the Land Grabbing Case was pending before the Principal District Judge. The suit pending on the file of IX Additional District Judge was withdrawn and transferred to the Principal District Judge, Visakhapatnam. The order was very clear that the suit was transferred to the Principal District Judge and the case was never directed to be numbered as Land Grabbing Case. The prayer of the petitioners was to transfer the case to the Principal District Judge for disposal by the same officer to avoid conflict of opinions in both the cases.

11. It is not as though the civil suit was converted into land grabbing case by

treating it as a case under the special enactment. So long as the suit is transferred from one Court to the other Court within the District, the Civil Court has every jurisdiction to transfer the matter. If it is transferred to the Special Court by treating it as a land grabbing case for the purpose of enquiry and disposal, then only the decision rendered by a Division Bench comes into play and in such an event, the District Judge, as a Special Tribunal, will not have any power to transfer the suit.

12. The Principal District Judge is also designated as Special Tribunal under the Land Grabbing Act. Therefore, the District Judge was working in dual capacity, one as a District Judge as defined in CPC and as a Special Tribunal as defined under the Land Grabbing Act. The order of the District Judge never contemplated that the suit withdrawn from the Court of IX Additional District Judge shall be converted into the L.G.C. to be tried along with the L.G.C. No. 6 of 2000 pending before the Land Grabbing Tribunal. So long as the District Judge treat the matter as original suit without converting the same into land grabbing case, the transfer of the matter is valid and the jurisdiction of the Principal District Judge is not ousted. As the order discloses that the suit was only transferred from the Court of IX Additional District Judge to the District Judge in the capacity of Principal District Judge, I do not find any point in the contention of the revision petitioners that the District Court has no jurisdiction to transfer the case.

13. In the light of the above discussion, I do not find any ground to interfere with the order of the District Judge.

14. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.