

(2002) 06 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 1022 and 1087 of 1993

Dr. Mohiuddin

APPELLANT

Vs

Special Court (Second Court) and Others

RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 06 AP CK 0072

Hon'ble Judges : S.R. Nayak, J; Dalava Subrahmanyam, J

Bench : Division Bench

Advocate : Vilas V. Afzalpurkar, for the Appellant; Muddu Vijay, Govt. Pleader for Revenue and Bimal Bhaskar, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—W.A.No.1022 of 1993 is directed against the order of the learned single Judge dated 16-7-1993 in W.P.No.9837 of 1993 dismissing the writ petition wherein the appellant herein had assailed the validity and legality of the judgment and decree made by the Special Court constituted under Andhra Pradesh Land Grabbing (Prohibition) Act (hereinafter shortly referred as "Special Court") dated 30-4-1993 in L.G.C. No.96 of 1989. W.A.No.1087 of 1993 is directed against the order of the learned single Judge dated 16-7-1993 in W.P.No.9841 of 1993 dismissing the writ petition filed by the appellant herein wherein he had assailed the legality and validity of the judgment and decree passed by the Special Court dated 30-4-1993 in L.G.C.No.95 of 1989. Since the decision of the Special Court and that of the learned single Judge in both the cases is based on the common evidence led before the Special Court, these writ appeals were clubbed and heard together and they are being disposed of by this common judgment.

2. The background facts leading to the filing of the writ petitions may be noted briefly in the first instance. They are as follows: The appellant filed LGC No.96 of 1989 claiming that he is the owner of Plot No.64 admeasuring 6,396 square

yards carved out of the land comprised in Survey No.120 and 121 in Shaikpet village and that respondents 2 and 3 namely Mr. Vinod Kumar and Ms. Anita Agarwal are encroachers to an extent of 350 square yards out of the said land. Similarly, the appellant filed L.G.C.No.95 of 1989 complaining that the second respondent in W.P.No.9841 of 1993 namely A.K. Verma grabbed an extent of 900 square yards of land out of the land comprised in Plot No.64. The Special Court on appreciation of the oral and documentary evidence adduced before it came to the conclusion that the appellant petitioner has failed to establish the actual extent of land comprised in Plot No.64 and the burden to establish that fact being on the appellant petitioner and having failed to do so, no finding as regards the grabbing of certain extent of land by the respondents referred to above in Plot No.64 could be recorded. So opining, the Special Court dismissed both the petitions.

3. The appellant being aggrieved by the order of the Special Court made in L.G.C. No.96 of 1989 preferred Writ Petition No.9837 of 1993 whereas being aggrieved by the order made by the Special Court in L.G.C. No.95 of 1989, he preferred W.P.No.9841 of 1993. The learned single Judge dismissed both the writ petitions by separate orders but on the same day i.e. 16th July, 1993 having recorded the satisfaction that the factual conclusion arrived at by the Special Court is justified. Hence, these writ appeals by the unsuccessful writ petitioners.

4. We have heard Sri Vilas V. Afzulpurkar, learned counsel for the appellant and learned counsel appearing for the respondents. Learned counsel for the appellant contended that the factual finding recorded by the Special Court that the appellant petitioner has failed to establish title over the extent of land that is alleged to have been grabbed by the respondents is perverse and based on no evidence. Therefore, the only question that arises for our consideration and decision is whether the above factual finding recorded by the Special Court and affirmed by the learned single Judge of this Court is based on some legally permissible substantive evidence or not. In reaching the above conclusion, the Special Court has referred to Exs.C-3 and C-4 and also report of the Commissioner. The Special Court in L.G.C.No.96 of 1989 in para-10 of its judgment held :

"To find out whether the respondents have grabbed any portion of Plot No.64, it is absolutely necessary to find out the total extent of plot No.64 and the burden to prove that fact is on the petitioner. When CW-1 inspected plot Nos.64 and 68 for purpose of executing the warrant issued by this Court on a petition filed by the petitioner, he was given Ex. C-3 plan in which the extent of plot Nos.64 and 68 are mentioned. He filed his report and sketch based on Ex. C-3 only. When the evidence of CW-1 and his report which is marked as Ex. C-1 was against the contentions of the petitioner, the petitioner's counsel has gone to the extent of putting a question that Ex. C-3 was not handed over by him to the Commissioner when he inspected the plot. Though during the course of arguments it is conceded that Ex. C-3 plan was handedover to the Commissioner and the

Commissioner measured plots on the basis of Ex. C-3 which is not authenticated plan and he did not proceed to measure the extents of plot Nos.64 and 68 on the basis of Ex. C-4 which is a sketch enclosed to the partition deed Ex. A-3. Thus, it is very clear that the actual extent of plot No.64 which is claimed by the petitioner and proved to be his found in Ex. C-4 is not the actual extent of the said plot as that fact is not borne out either by the recitals in the partition deed which is marked as Ex. A-3. Without the conclusive evidence regarding the actual extent of plot No.64 it is not possible to give a finding that the petitioner has established title over the extent that is said to have been grabbed by the respondents which is said to be part of Plot No.64. The burden is on the petitioner to prove that fact and as the petitioner has failed to discharge the burden, we have no other go except to give a finding on issue No.1 in the negative."

5. From the factual statements supported by the documents made in para-10 of the impugned judgment, it can be seen that Ex. C-4 shows that the extent of land is 7,657 square yards whereas it is the specific case of the appellant petitioner that he is the owner of an extent of 6,396 square yards of land in Plot No.64 and thus, the difference in area is 1,261 square yards. No doubt, the Commissioner has recorded the finding in the report that Mr. A.K. Verma had encroached 249 square metres of land and that Mr. Vinodkumar Puri encroached 76 square metres of land. Thus, the total encroachment by the aforementioned persons is 325 square metres of land. Therefore, the question to be considered is whether the above encroachments made by the aforementioned two persons are part of 6,396 square yards comprised in Plot No.64, the title of which is claimed by the appellant petitioner or that land falls outside the said extent. As rightly held by the Special Court and accepted by the learned single Judge, there is absolutely no evidence to show that the encroached area of 325 square metres of land falls within 6,396 square yards of land comprised in Plot No.64. In that view of the matter, it cannot be said that the finding recorded by the Special Court and accepted by the learned single Judge is based on no evidence or perverse.

6. Be that as it may, the High Court under Article 226 of the Constitution of India cannot take up adjudication of disputed facts. The only thing to be seen in judicial review under Article 226 is whether the factual finding recorded by the fact-finding statutory authority is based on acceptable legal evidence or not. This Court cannot go into sufficiency or adequacy of the evidence. After hearing the learned counsel for considerable time, we are satisfied that the factual finding recorded by the Special Court is based on relevant material. No ground is made out to interfere with the order of the learned single Judge. The writ appeals are accordingly dismissed with no order as to costs.