
(2006) 11 AP CK 0028
In the Andhra Pradesh High Court
Case No : Writ Petition No. 18894 of 2005

Dr. V. Rajeshwar Rao

APPELLANT

Vs

M. Yadagiri Reddy and Others

RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2, 8(8)
Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2007) 2 ALD 17 : (2007) 1 ALT 306 : (2007) 1 APLJ 72

Hon'ble Judges : T. Ch. Surya Rao, J;G. Chandraiah, J

Bench : Division Bench

Advocate : Venkata Raghuramulu, for the Appellant; K. Mahipathi Rao, for the Respondent

Final Decision : Allowed

Judgement

T. Ch. Surya Rao, J.—The writ petitioner seeks to assail the order, dated 05-08-2005, passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act (for brevity, "the Act") in T.O.P.No.5 of 2004. The writ petitioner is the first respondent in T.O.P.No.5 of 2004. The respondents 1 to 6 herein are the petitioners therein. The writ petitioner filed the suit initially in O.S.No.48 of 1990 on the file of the Principal District Munsif, East and North, Ranga Reddy, seeking the relief of perpetual injunction. That suit, for want of necessary pecuniary jurisdiction, was directed to be returned. The petitioner seems to have represented the suit in O.S.No.218 of 2000 on the file of the I Additional District Judge, Ranga Reddy, where it was pending adjudication. Earlier, 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. The subject matter of those proceedings seems to be the land covered by Sy.No.10/2 of Habsiguda village.

On the premise that comprehensive proceedings encompassing the rights of various parties concerned with the land covered by Sy.No.10/2 of Habsiguda village are pending before the Special Court, and a Commissioner was appointed so as to survey lands in dispute, who submitted his report and to avoid conflicting findings by various fora, where the matters pending for adjudication, the respondents 1 to 6 herein filed T.O.P.No.5 of 2004 before the Special Court u/s 8(8) of the Act seeking transfer of the suit, O.S.No.218 of 2000, from the file of the I Additional District Judge, Ranga Reddy, to the file of the Special Court. Under the impugned order, the learned Special Court allowed that application directing the transfer of the suit. As aforesaid, that is now being assailed before us in the writ petition.

2. Sri Venkata Raghuramulu, learned Counsel appearing for the writ petitioner, raises a twofold contention before this Court, namely, (1) that the Special Court is not competent to direct the transfer of the suit pending on the file of the civil Court and (2) the suit, having been filed seeking the relief of perpetual injunction, is not within the competence of the Special Court to try.

3. Sri K. Mahipathi Rao, learned Counsel for the respondents 1 to 6, sought to sustain the impugned order.

4. Insofar as the first contention raised by the writ petitioner the provision germane in the context is Section 8 (8) of the Act, which reads as under:

Section 8(8).- Any case, pending before any Court or other authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court as if the cause of action on which such suit or proceeding is based had arisen after the constitution of the Special Court.

5. A perusal of the above excerpted provision shows that all matters which are pending before various Civil Courts having been instituted earlier to the advent of the Act and which would have been within the jurisdiction of the Special Court shall stand automatically transferred to the Special Court. Such a transfer is by means of operation of law in view of the provisions of Sub-section (8) of Section 8 of the Act. What is sine qua non from a perusal of the above provision obviously is that a case that has been pending before a Civil Court or other authority must be one that it would come within the jurisdiction of the Special Court. From the scheme of the Act, it is obvious that only those matters where there has been a specific averment inter alia in the application that an act of land grabbing has been committed as envisaged under Clauses (d) and (e) of Section 2 of the Act alone come within the jurisdiction of the Special Court. Therefore, all the matters which are pending before the Civil Courts immediately before the constitution of the Special Court will not come within the jurisdiction of the Special Court although the question of title is involved and the allegation that land has been encroached by the opposite party is alleged inter alia in the plaint, except those matters which come within the jurisdiction of the Special Court. The

provision operates proprio vigore only when the case which is pending before the Civil Court immediately preceding the establishment of the Special Court is of such a nature as otherwise would have been within the jurisdiction of the Special Court. The jurisdiction of the Special Court is exclusive and it takes away the jurisdiction of the Civil Court in respect of the matters where the commission of an act of land grabbing is alleged. 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.

6. Having due regard to the above clear legal position and since the suit O.S. No. 218 of 2000 which is pending on the file of the I Additional District Judge, Ranga Reddy, for adjudication and which has been instituted far subsequent to the advent of the Act and establishment of the Special Court, cannot be directed to be transferred. The provisions of Sub-section (8) of Section 8 of the Act, therefore, have no application in the instant case.

7. Apropos the other contention of the learned Counsel appearing for the writ petitioner that the suit O.S.No.218 of 2000 is not well within the competency of the Special Court and the Special Court cannot try it, having due regard to the conclusion reached by us hereinabove on the first point, it need not be adverted to. Even otherwise, it requires a perusal of the averments made inter alia in the plaint so as to see whether those averments attract the jurisdiction of the Special Court or not. Since the record is not available with us, we cannot legitimately reach any conclusion in regard thereto. Therefore, we propose to leave it open without expressing any conclusion in regard thereto. The question can be raised and considered only when the occasion arises when such a transfer is sought subsequently.

8. For the above reasons, the Writ Petition is allowed and the impugned order is hereby set aside. However, we make it clear that it is still open to the

respondents 1 to 6 to approach the appropriate forum seeking transfer. Under the circumstances, no separate order as to costs.