
(2001) 07 AP CK 0044
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3216 of 1998

Dr. V. Rajeshwar Rao

APPELLANT

Vs

State Govt. of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 7A, 8, 8(8)
Constitution of India, 1950 — Article 141

Citation : (2001) 4 ALT 595

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : C. Venkata Raghu Ramulu, for the Appellant; G.P. for Arbitration for Respondent No. 1 and K. Ramakanth Reddy, S.C. for O.U. for Respondent No. 35, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—The petitioner herein is the defendant No.26, who is assailing the orders in LA. No.916 of 1998 in O.S. No.36 of 1986 dated 11-2-1998 on the file of the II Additional Senior Civil Judge, Ranga Reddy District, allowing the application purportedly filed by the respondent No. 1-plaintiff (the Government of Andhra Pradesh) u/s 7-A read with Section 8 of the A.P. Land Grabbing (Prohibition) Act, 1982 (for short "the Act") to transfer the suit to the Special Tribunal constituted under the Act.

2. The respondent No. 1-plaintiff filed the suit for declaration of title and injunction or alternatively for possession, if found not in possession in respect of the suit schedule property, on the claim that the suit lands are Government lands which were acquired by the then Nizam Government from the previous owners for the purpose of the University under the provisions of the Land Acquisition Act, 1309 Fasli and as per the award passed, the previous owners have also received compensation. Though earlier the attempt made by the University to seek possession was rejected by dismissal of its suit in O.S. No. 1 of 1956, which was

confirmed by this Court in CCCA No. 61 of 1959, it does not bind the Government. It was alleged that in pursuance of the proceedings initiated under the provisions of the Act, eviction was ordered against one Habibuddin, a dismissed Assistant Caretaker of Osmania University and which has been confirmed in further appeals and revisions and he was evicted. Some of the purchasers have filed W.P. Nos. 1539 of 1974 and 798 of 1975 in this Court, which were initially dismissed by a learned Single Judge as per orders dated 18-11-1975. However, on appeal, a Division Bench as per orders in W.A. Nos.905 and 922 of 1975 held that the question as to whether the lands belong to the University or not has to be decided only in a proper suit to be filed by the Government. The said order was confirmed by the Supreme Court as per the judgment in C.A. Nos.3031 of 1977, 186 of 1978 and 137 of 1978 dated 16-3-1982 dismissing the appeals of the University reiterating the directions given to the Government for establishing their title in a properly instituted suit. It was further stated that as the Government is the real owner, it is entitled to seek a declaratory relief as sought for in the present suit. It is also the further claim of the Government that they have acquired title by prescription and adverse possession and, therefore, the defendants have no right, title or interest of whatsoever nature and they in fact are land grabbers and thus in view of the provisions of Sections 7-A and 8 of the Act, the civil Court loses its jurisdiction and consequently the suit requires to be transferred to the Special Court.

3. Contesting the application, the case of the petitioner was that a review of the earlier chequered litigation and the ultimate direction as given by the Division Bench of this Court and as confirmed by the Supreme Court, makes it clear that the Government has to establish their title in a regular suit and, therefore, the question of calling the petitioner or any person in possession as land grabbers does not arise. Further, even as per the allegations in the plaint, there is absolutely no whisper as to any land grabbing as against the petitioner. In those circumstances, the Government has to necessarily establish title which is in serious dispute and thus the civil Court has ample jurisdiction.

4. On a consideration of the rival submissions, the Court below allowed the application mainly on the ground that even though this Court and ultimately the Supreme Court also directed the Government to file a regular suit, in the Apex Court, apparently, the provisions of the Act have not been brought to its notice and from the allegations as can be found from the plaint, there is an act of land grabbing by the defendants and in spite of the fact that the suit has been filed prior to the coming into force of the said Act, in view of the amended provisions u/s 8(8) of the Act, the civil Court loses its jurisdiction and the matter requires to be transferred to the Special Court.

5. Heard Sri C. Venkata Ramulu, learned Counsel appearing for the petitioner and Sri K. Ramakanth Reddy, learned Standing Counsel for the University, in detail. On a consideration of the submissions made and perusal of the entire record, the only question which needs to be considered now in this case is as to

whether in the facts and circumstances of the case, the respondent No. 1-plaintiff can invoke the provisions of Sections 7-A and 8(8) of the Act.

6. There is no dispute as to the earlier round of proceedings between the parties. The case of the respondent No. 1-plaintiff is that the suit lands are Government lands which were acquired by the then Nizam Government under the provisions of the then Land Acquisition Act, 1309 Fasli and after regular procedure an award was passed and the previous owners have already received the compensation. However, in view of certain persons in possession setting up their claims, the University had to file a suit in O.S. No. 1 of 1956 for recovery of possession which on contest was dismissed and confirmed by this Court in CCCA No. 61 of 1959 as per the judgment and decree dated 24-1-1964. The case of the Government is that since they are not parties to the said proceedings, the decision therein is not binding on them even though the fact remains that the said acquisition was made for the purpose of the University. The eviction proceedings initiated by the Government under the provisions of the Land Encroachment Act have ultimately led to filing of the writ petitions in W.P. No. 1539 of 1974 and W.P. No. 798 of 1975 which were initially dismissed on 18-11-1975. However, in the appeal, a Division Bench of this Court as per orders in W.A. No. 905 of 1975 and 922 of 1975 directed the Government to establish their title in a regular suit. These orders were confirmed by the Supreme Court. It is only in view of these directions, the present suit came to be filed which is a comprehensive one seeking declaration of title and injunction and alternatively for possession in the event of the plaintiff being found not in possession. Even according to the respondent No. 1-plaintiff, apart from the alleged claim of title, there is also a plea of acquisition of title by prescription. The directions as given by this Court and confirmed by the Apex Court clearly point out to the Government to establish their title in respect of the suit land in a regular suit. Even a bare reading of the plaint allegations or from the events, nothing can be spelt out as to any land grabbing or a case of illegal possession. Both the parties are claiming title in their own manner. Therefore, in the circumstances, it cannot be said that there is any act of land grabbing.

7. On a reading of the provisions of Section 7-A and also 8 of the Act, there cannot be any dispute as to the competency of the Tribunal constituted thereunder to try the suits of the nature where land grabbing is alleged. As per the amended provision, it also equally applies to the suits filed prior to the enforcement of the said Act. Further, ample powers are also conferred under the said provisions to transfer such suits to the Tribunal. However, as per the scheme of the Act and also the definition as provided for in regard to "land grabbing" under the said 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. Admittedly, the suit is filed prior to the enforcement of the said Act and is in pursuance of the directions given by this Court and also the

Apex Court.

8. Across the Bar, the decisions reported in Anand Parbat Co-operative Housing Society Limited, Secunderabad Vs. Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad, . Bahagya Bai and Others Vs. The Mandal Revenue Officer and Another, . T. Sugunamma v. State of A.P. 1994 (2) An.W.R. 44 (NRC) (W.P. No. 7912 of 1989 and Batch, dated 15-7-1994). Pithana Nanda Kumar and others Vs. Kostu Eswara Rao and others, . Goundla Venkaiah and another Vs. Mandal Revenue Officer, RR District and others, and Mohd. Iqbal Vs. N. Prabhakar and Another, have been cited apart from the decisions of the Special Court constituted under the Act, On a reading of these decisions, it only emerges that it is only cases of alleged land grabbing or any such questions in respect of land grab fall within the jurisdiction of the Special Court and where there arises a bona fide dispute of title, it is only the civil Court which can decide the same. Therefore, in the instant case, it has to be seen as to whether there is any such case of land grabbing as reiterated in Bahagya Bai's case (2 supra) apart from the other decisions, in the absence of which, the respondent No. 1 cannot invoke the said provisions. Admittedly, after several rounds, even at the instance of the University, though the Government says that the said proceedings are not binding which can be gone into only in the main suit, there is a categorical direction against the Government by this Court as confirmed by the Apex Court for establishing their title in a regularly filed suit. From this, it clearly follows that there is not only a bona fide dispute of title but also a serious dispute of title and in the circumstances, it cannot be said that the allegations as contained in the plaint made out any case of land grabbing.

9. The Court below in its anxiety and giving a go-by to all the judicial canons and discipline, chose to observe:

"However, as I already indicated above, the learned Counsel for the petitioner referred a decision of the Supreme Court wherein the Supreme Court has directed the State Government to determine its title in properly constituted civil suit. However, on facts of the Supreme Court judgment, there is its (sic. no iota) of evidence on record to show that the application of the L.G. Act wherein the State Government is claiming a relief now was brought to the notice of his lordship of the Apex Court in the present case. When put it in simple, the learned Counsel for the respondent has submitted that in view of the observations of the Supreme Court, the civil Court has got alone jurisdiction and that the petitioner at this juncture is not expected to claim to send the matter to L.G. Court. However, I have narrated above that the circumstances that were leading to file to attract the provisions of L.G. Act has not been placed before the Apex Court. Had the L.G. Act is brought to the notice of request Supreme Court, if considered that the land grabbing Court has no jurisdiction. It is to be held that the Supreme Court considered the point whether the petitioner's claim attracts of provisions of L.G. Act. The L.G. Court is only in the State not in anywhere in India has not been dealt by the Apex Court. Therefore, when the provisions of

L.G. Act has not been by the S.C. Court." (True extract)

10. Apart from the fact that the judgment of the Supreme Court being of the highest Court of the land in the hierarchy, it is also a binding precedent under Article 141 of the Constitution of India. The Court below by making such observations has transgressed its limits and virtually sat over the judgment of the Apex Court, which is highly deprecated.

11. In the above said circumstances, it cannot be said that there is any act of land grabbing or allegations as such from out of the case as sought to be projected on behalf of the respondent No. 1-plaintiff so as to attract the provisions of the Act. Necessarily, it has to follow that it is only the common law Court i.e., the civil Court which has jurisdiction to entertain the suit and go into all such questions of title which are involved in the present case.

12. Accordingly, the revision is allowed and the order in LA. No. 916 of 1998 is set aside. No costs.