
(1993) 04 AP CK 0042

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2142/90

Govt. of A.P. and Others

APPELLANT

Vs

Sathaiah

RESPONDENT

Date of Decision : 07-04-1993

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 7A, 8, 8(8)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 2

Citation : (1993) 2 ALT 252 : (1993) 1 APLJ 480

Hon'ble Judges : P. Ramakrishnam Raju, J

Bench : Single Bench

Advocate : P.M. Gopal Rao, for the Appellant; M.R.K. Choudary, for the Respondent

Judgement

P. Ramakrishnam Raju, J.—The short, but important question that falls for consideration in this revision petition is, whether the Civil Court has got jurisdiction to try a suit for declaration and recovery of possession of certain land, situated within the Urban Agglomeration as defined in Clause "N" of Section 2 of the Urban Land (Ceiling and Regulation) Act, 1976, in view of the provisions of Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter called as "the Act") when an issue relating to Land Grabbing arises out of pleadings?

2. The respondent filed O.S.No. 460 of 1984 on the file of the II Additional Judge, City Civil Court, Hyderabad for declaration and for possession of the suit land, measuring 3636 Sq. Yards, together with profits against the petitioners. The suit was admittedly filed in April, 1984 i.e., long after Act 12 of 1982 came into force i.e., on 29-6-1982. The petitioners who are (1) The Government of Andhra Pradesh (2) The Collector, Hyderabad District and (3) The Chairman, Hyderabad Urban Development Authority, are contesting the suit. The petitioner Nos. 2 & 3 have filed separate written statements contending that the plaint schedule property as per the Land Record Registers, is recorded as Government

land and the Government of Andhra Pradesh issued G.O.Ms.No. 1047 dated 8-9-1981 transferring this and some other land for development under the scheme called "Budda Poornima Project" and possession was delivered to the third petitioner on 28-6-1984 by the Tahasildar, Golkonda Taluk after conducting panchanama. The petitioners filed a memo u/s 7-A of the Act stating that as the plaint schedule land belongs to the Government and as the same has been grabbed by the respondent, by virtue of the provisions of Sub-section (8) of Section 7-A of the Act, the suit should stand transferred to Special Tribunal on the commencement of the Andhra Pradesh Land Grabbing (Prohibition) Amendment Act, 1987 and therefore, the Court ceased to have jurisdiction. The respondent filed a counter opposing the said memo and contended that the said Act has no application and the Civil Court has got jurisdiction to try the suit. However, the lower Court by its order dated 21-12-1989 rejected the memo since it took the view that it is doubtful whether the Act 12 of 1982 has any application to the case and when the respondent is asking for possession of the land, the provisions of the Act have no application to the case and therefore, the suit does not stand transferred to the Special Tribunal. Aggrieved by the said order, the petitioners have filed this revision petition.

3. Sri P.M. Gopal Rao, learned Counsel for the petitioners, has submitted that the Act 12 of 1982 is a special enactment providing for the constitution of special Courts for enquiry into the alleged act of Land Grabbing and trial of cases in respect of ownership and title to or lawful possession of the land grabbed. He relied upon Section 8(2) of the Act and submitted that any case in respect of the alleged act of land grabbing or the determination of questions of title and ownership to or lawful possession of any land grabbed under the Act shall be triable by the Special Court constituted for the area and the jurisdiction of the ordinary Civil Court is by implication excluded. It is also his further submission that u/s 8(8) of the Act all cases cognizable by the Special Court shall stand transferred to the Special Court having jurisdiction.

4. Sri M.R.K. Choudary, learned Counsel for the respondent countered these arguments and relying upon the words occurring in Section 7-A(6) "as would have been within the jurisdiction of the Special Tribunal" contended that only those suits "as would have been within the jurisdiction of the Special Tribunal", alone shall stand transferred and inasmuch as this is a suit for declaration of title and possession, it cannot be transferred from the Civil Court as Civil Court alone has exclusive jurisdiction to try this suit. He also further contended that as per Section 7(1) it is clear that the Special Court shall have power to try cases relating to the alleged act of land grabbing with respect to ownership, title to or lawful possession of the land grabbed and therefore, the words ownership, title to or lawful possession are qualified by the words "land grabbed". He also contended that in view of the definition of the word "person", the Government cannot be included in the said definition and when there is no allegation by the respondent in his plaint that the Government has grabbed his land, the Act has no application.

5. Before answering the question that was framed at the threshold of this Judgment, a cursory look at the relevant sections of the Act is necessary.

6. The preamble of the Act would indicate that the Act was meant to prohibit, arrest and curb unlawful activities by person operating individually or in groups to grab land belonging to Government, local authority, religious or Charitable Institution of Endowment including a wakf or any other private person.

7. u/s 2(cc) land belonging to a private person means any land belonging to-,

(i).....

(ii)

(iii) any other private individual;

Section 2(d) defines "land grabber" as a person or a group of persons who commits land grabbing. The expression "land grabbing" is defined u/s 2(e) as every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) without any lawful entitlement. Person is defined as including a group or body of persons, an association, or a religious or charitable institution or endowment, whether incorporated or not; This is an inclusive definition.

8. Section 3 declares "land grabbing in any form" unlawful. Section 4 prohibits land grabbing and in case of contravention, punishment is prescribed. Section 5 prescribes penalty for other offences in connection with land grabbing. u/s 6 if offence is committed by Company, punishment is prescribed against the company as well as every person incharge of the affairs of the company.

9. Section 7 provides for constitution of Special Court for dealing with the cases of "land grabbing" and trial of cases in respect of the ownership and title to or lawful possession of the land grabbed.

10. Section 7(A) prescribes the powers and jurisdiction of the Special Tribunals and Section 8 in respect of Special Courts. Special Court is constituted with jurisdiction over the entire State; Whereas, Special Tribunals are constituted in each District having jurisdiction over the concerned district. The powers to be exercised by the Special Court are indicated u/s 9. Section 10 deals with the burden of proof. Section 11 indicates power to try offences. Section 15 shows that the Act has overriding powers. Section 16 empowers the Government to make rules under the Act. In a nut-shell, this is the structure of the Act.

11. The expression "land grabbing" has been defined as every activity of grabbing of any land whether belonging to Government etc., without any lawful entitlement and a person or group of persons who commits land grabbing is called "land grabber". u/s 1 of the Act, it is clear that the Act applies to all lands situated within the limits of Urban Agglomeration, as defined in Clause "N" of Section 2 of the Urban Land (Ceiling and Regulation) Act, 1976. It is not disputed

that this land is situated within the limits of Municipal Corporation, Hyderabad. Section 7 of the Act provides for constitution of Special Courts for enquiry into any alleged act of land grabbing and trial of cases in respect of ownership and title to or lawful possession of the land. Section 7-A deals with the constitution of special Tribunals and its powers. It is as follows:-

"7-A. Special Tribunals and its powers, etc:- (1) Every Special Tribunal shall have power to try all cases not taken cognizance of by the Special Court relating to 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 the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987 and brought before it and pass such orders (including orders by way of interim directions) as it deems fit: Provided".

Therefore, it is clear that Special Tribunal is constituted for purpose of enquiry into any alleged act of land grabbing and trial of cases in respect of the ownership and title to, or lawful possession of the land grabbed.

12. Section 8(1) of the Act confers power on the Special Court to take cognizance and try every case arising out of the 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 commencement of the Act. Section 8(2) of the Act provides that every case in respect of the alleged act of land grabbing or determination of questions of title and ownership or lawful possession of any land grabbed under the Act, shall be triable only by the Special Court and the decision of the Special Court shall be final.

13. Section 8(8) of the Act ordains that any case pending before any 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. Sub-section (2) of Section 8 starts with a non-obstante clause, that notwithstanding anything in the Code of Civil Procedure, 1908, Code of Criminal Procedure, 1973 or the Andhra Pradesh Civil Courts Act, 1972, any case in respect of the alleged act of land grabbing or determination of questions of title and ownership, or possession of any land grabbed under this Act, shall be triable by a Special Court only. Therefore, it is more than clear that the Civil Court is debarred from trying cases which fall within the exclusive jurisdiction of the Special Court constituted under the Act.

14. The allegations in paras "9 and 10" of the plaint clearly show that the third petitioner with the help of its employees forcibly took illegal possession of the suit land from the respondent and the third petitioner put up new stone pillars and enclosed the site by fencing wire at the instance of the petitioner Nos. 1 & 2 by removing respondent's boundary pillars through illegal and forciful encroachment. As such, sufficient allegations are found even in the plaint attracting the provisions of the Act.

15. The petitioners have alleged in the written statement in clear terms that the

land belongs to the Government. They denied the allegation that they have encroached illegally by evicting the respondent and they thwarted the attempt on the part of the respondent to remove the pillars raised by the third petitioner and sub-plant with his own pillars and the mischief was stopped at the intervention of the police.

16. On a perusal of the pleadings, it is clear that the issue regarding title to, ownership and possession of the land in question arises, which is exclusively triable by the Special Court alone. On a reading of several relevant Sections, one cannot but have an impression that Special Court or Special Tribunals are constituted to enquire into the alleged act of land grabbing by either of the parties and try the cases in respect of the ownership, title to or lawful possession in respect of the land against which allegations of land grabbing have been made. So, I cannot accept the contention that the Act applies only to cases where land grabbing has been completed or concluded and that the Act has no application to cases of apprehension or anticipation or to suits for declaration of title and possession. I am fortified in this view by a decision of a learned single Judge of this Court reported in J. Anji Reddy and Ors. v. M.A. Ali Khan and Anr. 1991(1) L.S. 268 : 1990 (1) An.W.R. 717, wherein, Justice Radhakrishna Rao, observed as follows:

"The contention of the learned Counsel for the petitioners that the Special Court is constituted only to try cases where land has already been grabbed, but not otherwise, has no substance."

The learned Judge, further observed that "the words "land grabbing" can be taken to mean not only the past transactions, but the present transactions and also continuing the process of the grabbing and preventing the real owner from enjoying the property".

17. The learned Counsel for the respondent has urged that the respondent never alleged that the Government is the land grabber at any time and therefore, in the absence of any allegation attributing grabbing of land by the Government, the jurisdiction of the Special Court cannot be invoked to transfer the suit.

18. In view of Section 1, the Act takes into its sweep all lands situated within the limits of Urban Agglomeration as defined in Clause "N" of Section 2 of Urban Land (Ceiling and Regulation) Act, 1976 or in any Municipal limits. Therefore, the litmus paper test for the application of the Act is in respect of the situation and location of the land and any dispute in regard to title to, ownership or possession of the said land shall be exclusively triable by the Special Court.

19. No doubt, exclusion of jurisdiction of the Civil Court cannot be readily inferred unless expressly provided or gathered by necessary implication. Section 9 C.P.C. may be usefully extracted hereunder:-

"Courts to try all civil suits unless barred.

9. "The Courts shall (subject to the provisions herein contained) have jurisdiction

to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

In view of the language employed in Sub-sections (2) and (8) of Section 8 of the Act, the same has to be inferred as it provides that any case pending before any Court shall stand transferred, thereby excluding the jurisdiction of the Civil Court to try such a case. The words "shall stand transferred" clearly implies that there is automatic transfer to the Special Court and the bar of jurisdiction of the Civil Court is equally automatic. Sub-section (2) of Section 8 which starts with a non-obstante clause, also clearly implies the bar of jurisdiction of the Civil Court.

20. This view of mine is supported by a decision reported in Raghavaratnam v. State of A.P. 1987 (1) ALT 771 in which, a learned single Judge observed as follows:-

"If matters relating to any given case bring it within the jurisdiction of the Special Court conferred by Section 7 of the Land Grabbing Act, then, necessarily, the matter is required to be enquired into by the Special Court of exclusive jurisdiction constituted under the Land Grabbing Act. That is the clear purport of Section 8(8) of the Land Grabbing Act which requires that all such cases shall stand transferred to the Special Court having jurisdiction. It would therefore, appear that a Civil Court is debarred from trying matters which fall within the exclusive domain or jurisdiction of the Special Court constituted under the Land Grabbing Act."

21. At this juncture, it is also necessary to notice Section 15 for a while which contains a non-obstante clause. In view of this clause, the provisions of this Act will prevail over any other law for the time being in force or custom, usage or agreement or decree or order of a Court or any other Tribunal or authority. Therefore, the Special Court or the Tribunal alone will have exclusive jurisdiction. To that extent, the jurisdiction of the Civil Court is clearly ousted. The leading decision on this point reported in Addanki Tiruvenkata Thata Desika Charyulu (Since deceased) and after him his legal representatives Vs. State of Andhra Pradesh and Another, is binding on me and it throws ample light and guidance in determining exclusion of the jurisdiction of the Civil Court.

22. As already stated, in this case, the respondent is claiming the plaint schedule land on the ground that he purchased the same under a registered sale deed, and that he was also put in possession of the same and as such, his claim for title and possession attracts the application of the Act inasmuch as the said question is exclusively triable by the Special Court in the light of the defence that the land originally belongs to none else than Government and now the Hyderabad Urban Development Authority. Therefore, I have no hesitation in coming to the conclusion that the jurisdiction of the Civil Court is ousted and it is only the Special Court that is exclusively conferred with the jurisdiction to try this case.

23. Sri M.R.K. Choudary, the learned Counsel for the respondent, has next

contended that since the Government or the HUDA cannot be alleged to be the land grabbers, and as the respondent is not alleging land grabbing by them, the Act has no application to this case.

24. As already seen, as per the language of Section 7-A and 8, the Special Tribunal or Special Court, as the case may be, shall have power to try all cases relating to any alleged act of land grabbing. The words "any alleged act of land grabbing" occurring in those sections are wide and significant, which do not leave any doubt that the Special Tribunal and Special Court have alone got jurisdiction if an allegation of land grabbing is made, no matter whether it is by or against the Government, local authority or a private party. I am fortified in this view of mine in view of Sub-section (1) of Section 8 which says that the Special Court can take cognizance of any alleged act of land grabbing either suo motu or on application made by any person, officer or authority. Sub-section (2) of Section 8 throws further light when it says that notwithstanding anything contained in Civil Procedure Code, Criminal Procedure Code or Andhra Pradesh Civil Courts Act, the alleged act of land Grabbing shall be triable only by a Special Court. Therefore, I have no hesitation to reject this contention.

25. The learned Counsel for the respondent, finally contended that inasmuch as this Act is a State Act and therefore, it cannot override the Central Acts like Civil Courts Act and Civil Procedure Code.

26. Although this is a State Act, the Act was submitted for the assent of the President of India and received the assent on 14th September, 1982. Item 18 of List II (State List) under Schedule VII of the Constitution, "land, rights in or over land, land tenures, including the relationship of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land etc., are within the exclusive jurisdiction of the State Legislature. Item 35 of the same list also covers the works, lands and buildings vested in are in possession of the State. Item 45 relates to the land revenue, including assessment and collection of land revenue, maintenance of land records, survey for revenue purpose and record of rights and alienation of revenues. Therefore, it is clear that the State Legislature is competent to make laws inasmuch as the subject - land is within the exclusive jurisdiction of the State Legislature.

27. For all the above reasons, I set aside the order passed by the lower Court and hold that the suit-O.S. No. 460/84 on the file of the II Additional Judge, City Civil Court, Hyderabad, shall stand transferred to the Special Tribunal, Hyderabad constituted under Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. The C.R.P. is accordingly ordered. No order as to costs.