

(2001) 07 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2091 of 1990

Hussain Bin Abdullah (died) by LR.s. and others

APPELLANT

Vs

Special Court under A.P. Land Grabbing (Prohibition) Act,
Hyd. and others

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 7
Andhra Pradesh Record of Rights in Land Act, 1971 — Section 5(3)
Transfer of Property Act, 1882 — Section 53
Urban Land (Ceiling and Regulation) Act, 1976 — Section 42

Citation : (2001) 5 ALD 366

Hon'ble Judges : V. Eswaraiah, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. M.V. Durga Prasad, for the Appellant; Government Pleader for Revenue and Mr. M. Rama Rao, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—The petitioners filed this writ petition for issuance of a writ of certiorari calling for the records in LGC No. 74/1989 dated 12-2-1990 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad and to quash the same as illegal, void and without jurisdiction.

2. The petitioners filed this writ petition against the aforesaid judgment of the Special Court in declaring that Shaik Abdullah Bin Salam, father of petitioners 2 to 4 herein original owner and pattedar sold the property in question admeasuring Ac.4-13 gts bearing Sy.No. 91 situated at Jelpally village, Saroornagar Mandal, Ranga Reddy District to Smt. Seshu Sarojini Devi, who in turn, sold the same to the 2nd respondent herein, who is the applicant in Land Grabbing Case and the petitioners are in unauthorised occupation of the grabbed land without any lawful entitlement and with a view to illegally taking the possession of the same, and therefore, they are liable for eviction. Accordingly, the petitioners are directed by the Special Court to redeliver the possession of

the same to the 2nd respondent herein.

3. The 2nd respondent (hereinafter referred to as "the applicant") through his General Power of Attorney filed LGC No. 79/1989 u/s 7-A(1) and Section 8(1) of the A.P. Land Grabbing (Prohibition) Act, 1982 (for short "the Act") against the petitioners herein stating that one Shaik Abdullah Bin Salam S/o. Shaik Salam was the absolute owner and possessor of the land in question and he sold the said property to Smt. M. Seshu Sarojini Devi under a registered sale deed No. 389/1963 dated 25-10-1963 which was marked as Ex.A2 in LGC. As the Custodian and Collector, Ranga Reddy District illegally created cloud over the title of Smt. Sarojini Devi, she filed suit OS No. 70/66 on the file of the I Additional Judge, City Civil Court, Hyderabad, for declaration of title against the Custodian of Evacuee property, the Collector, Hyderabad and others and the suit was decreed on 15-2-1972 which was marked as Ex.A4. Smt. Seshu Sarojini Devi entered into an agreement of sale in respect of the said property with the applicant and due to some misunderstandings the applicant filed OS No. 173/1985 against Smt. Seshu Sarojini Devi on the file of the Munsif Magistrate Court, East and West, Ranga Reddy District which was ended into compromise on 31-12-1985 and accordingly a compromise decree has been made which was marked as Ex.A5. As per the said compromise petition, Smt. Seshu Sarojini Devi delivered vacant peaceful possession of the said property to the applicant on 18-10-1981 and the applicant is in continuous possession and enjoyment of the same and the applicant being the purchaser of the said property he has got every right to enjoy the property as absolute owner and Smt. Seshu Sarojini Devi shall not interfere with the peaceful possession of the application in future. Copy of the compromise petition was marked as Ex.A6. The name of Smt. Seshu Sarojini Devi was mutated in the Revenue records. Smt. Seshu Sarojini Devi - Vendor of the applicant was in continuous possession of the land from November, 1961 till the property was sold in 1981 and thereafter the applicant is in continuous possession of the said property and the petitioners have no right, title or whatsoever and illegally grabbed the property without any authority depriving the rights of the applicant. The petitioners are the anti-social elements and got good political influence and illegally grabbed the land on 10-4-1989.

4. A counter has been filed on behalf of the respondents admitting that Shaik Abdullah Bin Salam - father of petitioners 2 to 4, herein was the original owner of the said land and Shaik Abdullah Bin Salam never sold the property in question to Smt. Seshu Sarojini Devi and the so-called registered sale deed (Ex.A2) is a fabricated document and brought into existence by impersonating Shaik Abdullah Bin Salam and Smt. Seshu Sarojini Devi and the said transaction is not a genuine transaction. The 1st petitioner is the son-in-law of Shaik Abdullah Bin Salam, the real owner. The 1st petitioner herein is the 3rd respondent in the Land Grabbing Case. The 1st petitioner and the other respondents in the Land Grabbing Case are in no way concerned with the said land and they are not in possession of the same. Shaik Abdullah Bin Salam passed away in the year 1978 and after his death his sons - petitioners 3 and 4 herein are entitled for the said property and

the 1st petitioner is looking after their interest and their property. Suit OS No. 70/66 is a collusive and fraudulent one and the findings referred to in the said judgment (Ex.A4) are not binding on the sons of Shaik Abdullah Bin Salam. Similarly, suit OS No. 173/1985 (Ex.A5) filed in collusion with Smt. Seshu Sarojini Devi and the said judgment is not binding on the petitioners as they are not parties to the said proceedings and as it is a collusive decree obtained behind their back. It is further stated that mutation of the records is also collusive and the entries referred in the pahanies are managed one with the connivance of the Mandal Revenue Officer and the said Shaik Abdullah Bin Salam's sons filed revision before the Revenue Divisional Officer and the Revenue Divisional Officer set aside the same by proceedings dated 10-7-1989 (Ex.A32), and therefore, mutation referred to in the statement of facts is not at all of any value. Smt. Seshu Sarojini Devi did not deliver the possession of the said property to the applicant either in 1981 or 1985 as her name was mutated in the Revenue records only in the year 1988. It is further stated that the transfer of the land by Shaik Abdullah Bin Salam in favour of Smt. Seshu Sarojini Devi is violative of Section 47 of A.P. (T.A) Tenancy and Agricultural Lands Act, 1950 (For short "the Act 1950"), and therefore, the so called sale deed is null and void and the transfer of the property by Smt. Seshu Sarojini Devi in favour of the applicant is also illegal in view of Section 42 of the Urban Land Ceiling Act 33 of 1976 and the said transaction does not confer any right or interest on the applicant. It is further stated that the petitioners herein have not grabbed the land and the 1st petitioner is supervising the said land and they have not committed any offence under the Act, 1982. On behalf of the applicant, the Power of Attorney Holder was examined as PW1. The vendor of the applicant- Smt Seshu Sarojini Devi was examined as PW2 and her son was examined as PW3. Exs.A1 to A36 were marked on behalf of the applicant. The 1st petitioner herein was examined as RW1 and the 2nd petitioner herein i.e., son of Shaik Abdullah Bin Salam as RW2. Exs.B1 to B8 were marked on behalf of the petitioners herein. The Special Court framed the following points for determination:

1. Whether the applicant is the owner of the suit land?
2. Whether the petitioners herein have grabbed the suit land?
3. To what relief?

5. On the oral and documentary evidence, the Special Court held that Shaik Abdullah Bin Salam, original owner and pattedar had sold the said property under Ex.A2 to Smt. Seshu Sarojini Devi (PW2), who in turn, sold the same to the applicant and the petitioners are in unauthorised occupation of the grabbed land without any lawful entitlement and with a view to illegally taking possession of the same, and therefore, they are liable for eviction and accordingly allowed the application directing the petitioners herein to evict from the application schedule land and deliver the possession of the same to the applicant with costs. Aggrieved by the same, the petitioners herein filed the present writ petition.

6. Sri M.V. Durga Prasad, learned Counsel appearing for the petitioners contended that the father of petitioners 2 to 4, Shaik Abdullah Bin Salam was the original owner, pattedar and possessor of the said land and he died in 1978 and after his death, his sons- petitioners 2 to 4 and other brothers have succeeded the title and became entitled for the said land as owners and possessors and they were out of country from 1974 onwards and returned to India in 1985. The original owner - Shaik Abdul Bin Salam never sold the property to Smt. Seshu Sarojini Devi. The said sale deed was obtained through imposter and in violation of the Act, 1950 and also Urban Land Ceiling Act 33 of 1976 and the name of the Smt. Seshu Sarojini Devi and the applicant was entered in the Revenue record without following procedure under ROR Act. The mutation of the name of the Smt. Seshu Sarojini Devi in the Revenue record has been questioned by the petitioner before the Revenue Divisional Officer and the Revenue Divisional Officer allowed the revision holding that the father of the petitioners was the original pattedar and the order of the Mandal Revenue Officer dated 1-2-1989 in sanctioning the change of registry in favour of Smt. Seshu Sarojini Devi are in contravention of Section 5(3) of the Record of Rights in Land Act 1971 and the Mandal Revenue Officer was directed to restore the name of Shaik Abdullah Bin Salam in pattedar column against Sy.No.91 of Jalpally village. It is further stated that the transfer of the land by Shaik Abdullah Bin Salam is hit by Section 47 of the Act, 1950 and the transfer of the land by Smt. Sarojini Devi in favour of the applicant is also hit by the provisions of Urban Land Ceiling Act 33 of 1976, and therefore, neither Smt. Sarojini Devi nor the applicant has acquired any right and title over the suit schedule property and the Special Court committed serious irregularity in entertaining and allowing the application of the applicant. It is further contended that the applicant has no title and the possession of the petitioners is valid possession and they are the real owners and they cannot be evicted and the applicant is also cannot take the shelter under the provisions of the Section 53-A of the Transfer of Property Act as it has no application.

7. On the other hand, Sri M. Rama Rao, learned Counsel appearing for the applicant and the Government Pleader for Revenue appearing for the State submits that the earlier judgments of the civil Court are binding on the petitioners and they have not questioned either the said judgments or the registered sale deed (Ex.A2), and therefore, they are estopped from contending that the said registered sale deed (Ex.A2) and the earlier judgments of the civil Court (Ex.A4).

8. The learned Counsel for the applicant further stated that Shaik Abdullah Bin Salam was the original pattedar, who has sold the said property pursuant to the agreement of sale in the year 1961 and thereafter by executing a regular sale deed dated 25-10-1963 (Ex.A2) and the name of Smt. Sarojini Devi is continuously shown in possessor column No.16 from 1963-64 to 1986-87 as is evident from Exs.A7 to Ex.A25, and thereafter the name of the applicant has been shown in the Revenue record (Ex.A26) and the Mandal Revenue Officer mutated the name of Smt. Sarojini Devi as pattedar in the revenue records as

per proceedings dated 1-2-1989 (Ex.A27) and the proceedings of the Revenue Divisional Officer illegally setting aside the mutation proceedings dated 1-2-1989 made in favour of Smt. Sarojini Devi has been stayed by the Joint Collector, Ranga Reddy District vide proceedings dated 21-8-1989 (Ex.A29) and the said land being the agricultural land exempted from the Urban Land Ceiling Act and Smt. Sarojini Devi has also filed a declaration under Urban Land Ceiling Act on 15-9-1976 under Ex.A30.

9. It is further stated that the original owner and pattedar Shaik Abdullah Bin Salam gave evidence in suit OS No. 70/66 as PW1 and the said deposition was marked as Ex.A35 in which he has stated that Smt. Sarojini Devi purchased the said land from him and after receiving the consideration he has executed Ex.A2 transferring all his rights in her favour. He further submitted that the land was grabbed on 10-4-1989 and the applicant was illegally dispossessed from the said land and immediately an application has been filed before the Special Court on 26-4-1989.

10. Sri M. Rama Rao, learned Counsel for the applicant contended that the exhibits obtained by the petitioners without any attestation by the competent revenue authorities are illegal and all the documents have been created for the purpose of grabbing the land which relates to the same period and the petitioners have not filed any relevant documents in proof of their title or possession, and therefore, the Special Court rightly rejected all the exhibits filed on behalf of the petitioners. He further stated that the provisions of Section 47 of the Act, 1950 has no application to the facts as the question does not relate to the landholder and the tenant of the agricultural land and the alienation of the said land by the original owner in favour of Smt. Sarojini Devi is valid and so also the alienation of the said land by Smt. Sarojini Devi in favour of the applicant is also not hit by Section 47 of the Act, 1950 as the said Act is mainly intended in respect of the alienation of the land in relation of landholder and the tenant of the agricultural land and either the original owner or Smt. Sarojini Devi or the applicant will not come within the ambit of the provisions of the said Act, 1950, and therefore, the transfer made under Ex.A2 and the subsequent transfer by Smt. Sarojini Devi in favour of the applicant is not hit by Section 47 of the Act, 1950. Even otherwise, the said Section 47 of the Act, 1950 is omitted from the statute book with effect from 18-3-1969. The vendor of the applicant is in continuous possession of the said property from 1961 onwards and even if the sale deed is hit by Section 47 of the Act, 1950, her possession from 1969 to 1981 is without any interruption and continuous either from the original owner and pattedar or from his sons/petitioners herein and thereafter the possession of the applicant is also continuous and also without any interruption and thus the applicant acquired the title by adverse possession as the applicant and her vendor are in continuous and uninterrupted possession for about 20 years i.e., from 1969 to 1989.

11. It is held by the I Additional Civil Judge, City Civil Court, Hyderabad by

judgment dated 15-2-1972 in OS No. 70/66 (Ex.A4) that the vendor of the Smt. Sarojini Devi is continuous possession and enjoyment of the land in question pursuant to the agreement of sale dated 15-11-1961 and further as per the assigned deed dated 21-11-1962 from the original owner and pattedar of the said land Shaik Abdullah Bin Salam, Shaik Abdullah Bin Salam was the Dawami Kauldar under the permanent lease deed and sale deed dated 22-4-1951 obtained from one Gulam Shabuddin Khan Bahadur, original owner of the said property. The original owners of the said property transferred their rights in favour of the vendor of Smt. Sarojini Devi and Smt. Sarojini Devi acquired absolute rights over the suit land as Shaik Abdul Bin Salam was entitled to sell away the land. The Custodian illegally notified the said land as evacuee property and the original owner late Ghulam Shahbuddin Khan Bahadur parted away all his rights and possession in the suit property prior to his death in or about 1951 at Hyderabad in favour of the vendor of Smt. Sarojini Devi, and therefore, the order passed by the competent authority and the Custodian of Evacuee property is illegal, void and without jurisdiction. The Court further held that the vendor-Smt. Sarojini Devi acquired the title to the property and her predecessors in title have perfected their title to the property.

12. The applicant and his predecessor in title are in continuous possession of the property from 1962 onwards till the land is grabbed i.e., upto 1989. The sale deed executed by the father of the petitioners (Ex.A2) and the judgment of the civil Court (Ex.A4) in which the father of the petitioners was also examined as PW1 wherein he had admitted that he had sold the property and also filed an application for mutation of the property in favour of the purchaser-Smt. Seshu Sarojini Devi and the subsequent sale of the property in favour of the applicant and the compromise decree in suit OS No. 173/83 (Ex.A5) have become final and the petitioners have not chosen to question the same, but, on the other hand, illegally dispossessed the applicant and grabbed the land in April, 1989. Except stating that the sale deed (Ex.A2) and the judgments of the civil Courts (Exs.A4 and A5) are illegal, the petitioners have not been able to prove that the sale deed (Ex.A2) is not genuine and the said judgments of the civil Courts have no force of law. Absolutely no evidence has been let in with regard to their title and possession for the period from 1962 to 1988 i.e., for a period of 26 years and as per sale deed (Ex.A2) vendor of the appellant is in continuous possession from 1962 onwards till 1981 and thereafter the applicant is in continuous possession and even assuming that the sale deed dated 25-10-1963 hit by Section 47 of the Act, 1950, her possession from the date of deletion of Section 47 i.e., from 1969-1981 i.e., for a period of 12 years and thereafter the possession of the applicant upto 1989 i.e., for a total period of 20 years is continuous and without any interruption and thus the applicant and his predecessor in title have perfected the title by adverse possession.

13. A Division Bench of this Court in C.V. Narayan Reddy Vs. Katanguru Raghava Reddy and Another, , following the Full Bench judgment of this Court in K. Parvathamma Vs. The Commissioner of Excise (Board of Revenue), Govt. of

Andhra Pradesh, Hyderabad and Others, , held that after deletion of Section 47 i.e., after 18-3-1969 there is no need to take permission for alienation of the land u/s 47 and the agreement holder is entitled to avail the benefit of Section 53-A of the Transfer of Property Act and in that case it was directed to compute in the land in the hands of the agreement holder as the agreement holder is entitled to sue for specific performance, and therefore, such lands must be included in the holding of the transferee. This judgment also has relevance to the contention of the applicant that the applicant is entitled for the benefit of the Section 53-A of the Transfer of Property Act after deletion of Section 47.

14. The learned Counsel for the petitioners mainly relied on the judgment of this Court in Meram Pocham and Another Vs. The Agent to the State Government, (Collector), District Adilabad and Others, and states that the applicant cannot seek protection of Section 53-A of the Transfer of Property Act as the sale deed (Ex.A2) is hit by Section 47. The case that fell for consideration in the aforesaid case relates to the Agency Area and the purchaser therein was not having any title before Regulation 1 of 1959 which came into force from 1-12-1963 and there is a total prohibition for the sale of the lands situated in the Agency Tracts in favour of a non-tribal, and therefore, any agreement of sale or sale deeds after Regulation 1 of 1959 came into force is null and void in view of Section 3 of the said Regulation. The facts of the said case has no application to the present case as the land in question is not situated within the Scheduled Area and even assuming that Section 47 is applicable to the facts of the case, the said section has been deleted from the statute book in 1969 and after deletion of Section 47, applicant and his predecessor in title has perfected the title by adverse possession.

15. To sum up the facts that the father of petitioners 2 to 4 was Dawami Kauldar under sale deed (Ex.A1) dated 22-4-1951 and has purchased the rights of the original pattedar and owner and became the absolute owner and transferred the same in favour of the vendor of the applicant pursuant to the agreement of sale dated 15-11-1961 and assignment deed dated 21-11-1962 and subsequently by a registered sale deed (Ex.A2) as held by the judgment (Ex.A4) and thus the vendor of the applicant was in continuous possession from 15-11-1961 till the same is parted in favour of the applicant in 1981 and the applicant is in continuous possession till he was dispossessed in 1989 and there is unimpeachable evidence viz. Exs.A2 to A36 to show that the applicant has perfected his title by adverse possession even assuming that Section 47 of the Act, 1950 has application, and we, therefore, do not see any grounds to interfere with the order of the Special Court and the writ petition is accordingly dismissed with costs.