
(2003) 04 AP CK 0094

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25996 of 1996 and Rev. WPMP No. 17964 of 1999

Iswar Raj and Others

APPELLANT

Vs

Special Court under A.P. Land Grabbing (Prohibition) Act and
Others

RESPONDENT

Date of Decision : 16-04-2003

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2

Citation : (2003) 3 ALD 126 : (2003) 3 ALT 273

Hon'ble Judges : C.V. Ramulu, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : P. Sri Raghuram, for the Appellant; Adv.-General, for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—This writ petition is directed against the judgment dated 5th October, 1996 made in L.G.C. No. 246 of 1995 by the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad. The Special Court by the said judgment declared all the parties including the applicants as well as the respondents in LGC, except the State of Andhra Pradesh, as land grabbers within the meaning of the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act (for short "the Act"). The Special Court accordingly directed the applicants as well as respondents in LGC to deliver the vacant possession of the application schedule land to the Government of Andhra Pradesh (Respondent No. 67 in LGC) within two months from the date of the judgment.

2. In order to appreciate as to whether the impugned judgment suffers from any error apparent on the face of the record, it is just and necessary to notice the relevant facts:

3. The petitioners herein are arrayed as respondents 2 to 6 and 9 in the said LGC. There is no dispute whatsoever that the writ petitioners' family is the true and absolute owner of the property in Survey No. 76, Ameerpet, bearing Door

No. 7-1-212, popularly known as Shiv Bagh of an extent of Ac. 11-00. Three declarations under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the ULC Act") were filed on behalf of the family of the writ petitioners. There is also no dispute whatsoever that the family of the writ petitioners was declared as surplus landholder.

4. It appears that even during the pendency of the proceedings under the ULC Act, the family of the writ petitioners entered into an agreement of sale with the second respondent-Vanaja Co-operative House Building Society on 10-5-1981. They have filed an application for exemption u/s 20 of the ULC Act in terms of G.O. Ms. No. 136, dated 28-1-1981. It is the case of the writ petitioners that the second respondent-Society misused the said agreement of sale and inducted several persons into possession of the land without their consent. Several transactions were taken place without their knowledge.

5. In the meanwhile, one G. Subramanyam and 12 others filed the above LGC claiming to be the allottees of the second respondent-Society against 66 respondents, including the petitioners herein, alleging them to be the land grabbers. It is the case of the applicants therein that they have paid the money to the second respondent-society for allotment of plots and obtained receipts for the payments made. But, with a view to deprive their legitimate right, the 10th respondent in LGC, who was the then President of the second respondent-society, got the agreements endorsed in favour of respondents 14 to 66 in LGC by the writ petitioners who are the owners of the application schedule land. According to the applicants in LGC, the respondents 14 to 66 in LGC are not at all the members of the second respondent-society and in collusion with the President of the second respondent-society (respondent No. 10) all the above respondents have obtained bogus membership of the society and taking advantage of the bogus membership they have grabbed the application schedule land and raised constructions over the said land without any right, title or entitlement to occupy any portion of the application schedule land. The land alleged to have been grabbed by respondents 14 to 66, according to the applicants furnished in the LGC, is 20,000 square yards. But the total extent of the land, around which the dispute centers, according to the findings of the Special Court, is Ac. 10-00.

6. The State of Andhra Pradesh represented by its Secretary, Revenue Department is arrayed as 67th respondent in the LGC.

7. For the present, it is not necessary to refer to the various pleas taken by the so-called members of the second respondent-society resisting the application filed by one such member of the same society. There appears to be some internecine war going on between more than one group of members in the said second respondent co-operative society, with which we are not concerned for the present in this writ petition.

8. The writ petitioners herein filed a detailed counter-affidavit before the Special

Court inter alia admitting that they have executed an agreement of sale in favour of the second respondent-society on 10-5-1981. They have also admitted that applications for grant of exemption were filed under the provisions of the ULC Act. The second respondent-society failed to get the exemption till date. They have expressed their ignorance about the internal affairs of the second respondent-society and its members. They have denied of execution of any other agreement in favour of any other individual member of the second respondent-society except the agreement entered by them with the second respondent. It is specifically stated that the order under Sections 8(4) and 9 under the provisions of ULC Act had been passed only on 28-8-1993 and they were advised to pursue the matter in appeal. There is no vesting of the land with the Government since no proceedings u/s 10 of the ULC Act have been taken by the authorities to their knowledge. There is no act of land grabbing as far as they are concerned. They cannot be accused of any land grabbing and that they are the lawful owners of the land in question, about which there is no dispute. They have denied the right, title or lawful entitlement of the applicants in LGC to invoke the jurisdiction of the Special Court under the provisions of the Act. This is the sum and substance of the defence taken by the writ petitioners herein in the LGC.

9. Now, it would be appropriate to notice the plea taken by the State arrayed as 67th respondent in LGC. A counter affidavit has been filed by the Additional Special Officer-II, Urban Land Ceiling, Hyderabad. It is not known as to how he could have represented the State of Andhra Pradesh and filed the counter-affidavit.

10. Be it as it may, in the said counter-affidavit, the ownership of the writ petitioners herein and their filing declaration declaring total area of Ac.9-00 in Survey No. 76 of Ameerpet Village has been admitted. It is also admitted that the writ petitioners have filed applications seeking exemption in accordance with G.O. Ms. No. 136, Revenue, dated 28-1-1981 for transferring the lands in favour of the second respondent-society.

11. The orders u/s 8(4) of the ULC Act were issued on 15-2-1994 computing the holding of three declarants declaring each one of them to be the surplus vacant landholder to an extent of 14,186-90 square yards. Necessary notification was published u/s 10 of the ULC Act in the Gazette on 9-6-1994.

12. The Government after careful consideration rejected the request for grant of exemption by Memo dated 1-3-1995. In the circumstances, neither the applicants nor the respondents acquired any legitimate right and the very transaction of agreement of sale is hit by Sections 5(3) and 19(4) of the ULC Act. Neither the applicants nor the respondents therein have any valid title to the land.

13. Having said so, the deponent in the counter-affidavit made an important statement, which is to the following effect:

"The respondent is taking separate steps for the recovery of surplus land etc."

14. The further plea is that the internal disputes between the members of the society have to be decided u/s 61 of the Andhra Pradesh Co-operative Societies Act, 1964 and the LGC filed by the applicants is not maintainable in law.

15. The judgment of the Special Court reveals that on 5-7-1996 it had passed an order making it clear to all the parties that it intended to hear both sides on the maintainability of the application and for mat purpose, the case was adjourned to a future date. The Special Court accordingly had taken up the matter for hearing. There is nothing on record suggesting that the Special Court heard the matter finally with the consent of the parties. It is very interesting to notice that there is no evidence let in by any of the parties including the State of Andhra Pradesh arrayed as 67th respondent. There are no documents filed and exhibited in the case. The Special Court on the strength of the pleadings and the submissions came to the conclusion that the applicants as well as the respondents in the LGC are the land grabbers. Not even the proceedings declaring the writ petitioners herein to be the surplus landholders and the orders purported to have been passed by the Government rejecting the request of the writ petitioners as well as the second respondent-society for grant of exemption have been filed into the Special Court. Yet, the Special Court had chosen to make its own comments and arrived at the conclusion treating the writ petitioners as land grabbers on par with the applicants as well as other respondents who are none else than the so-called members of the second respondent-society. There is not even a whisper in the judgment rendered by the Special Court as to when the possession of the land has been taken over from the writ petitioners and their predecessor-in-title after they were declared as surplus landholders. The Special Court made certain observations suggesting conspiracy and collusion between the writ petitioners and respondents in LGC. It is not known as to on what basis the Special Court came to the conclusion as if the writ petitioners have inducted the members of the second respondent-society into possession of the land in question.

16. The Special Court also recorded a finding that the agreement dated 10-5-1981 executed by the writ petitioners in favour of the second respondent-society is null and void and the same does not confer any right upon the Society and its members. The Special Court further found that the second respondent-Society has been registered on 16-4-1981 and within a period of one month of the Society coming into existence the agreement of sale dated 10-5-1981 had also come into existence. The Special Court equated the said agreement of sale to that of a sale deed itself and accordingly observed that "as admittedly R-2 and the predecessors-in-title of Rule 3 to Rule 9 had sold tile-excess land in favour of Rule I Society without obtaining any exemption orders for the excess land under Ceiling Act, it has to be inferred that R-I society is a bogus society and had come into existence admittedly with the purpose to grab the surplus land." It is not known as to who admitted that the society itself came into existence with the purpose to grab the surplus land.

17. We have already noted that neither the agreement of sale nor any document

relating to the registration of the second respondent-Society nor any orders purported to have been passed by the competent authority under the provisions of the ULC Act have been held and marked as exhibits in the Special Court. The Special Court further found and observed that "as a matter of fact it is not in doubt that the Government is the owner of the application schedule property as the surplus land had vested in the Government. So it is only the Government that has title to the application schedule property. So we do not have any difficulty to hold that neither the applicants nor the respondents have any title or interest in the application schedule property." It is not known on what basis the Special Court recorded such a finding. The notification purported to have been issued by the competent authority u/s 10 of the ULC Act, admittedly, had not been filed before the Special Court.

18. The Special Court held that "this is a case where applicants 1 to 10 are making attempts to grab the Application-Schedule property and whereas respondents 1 to 19 and 21 to 26 have actually grabbed the Application-Schedule property and some among the respondents had made constructions. As already pointed out, the Application-Schedule property is public property of which the Government is the owner." Respondents 2 to 9 in LGC (writ petitioners herein and two others) are admittedly the owners of the land. It is not known as to on what basis the Special Court held that the writ petitioners herein were not the owners of the lands and made attempts to grab the application schedule property.

19. Sri P. Sri Raghuram, learned Counsel for the writ petitioners contended that the Special Court having expressed its intention to consider the preliminary objection as to the maintainability of the case, had proceeded to take up the matter finally and terminated the proceedings without framing any issue and recording any evidence. It is further contended that there is no evidence on record that the proceedings either under Sections 8(4) and 9 or u/s 10 of the ULC Act have been served upon the writ petitioners. It is contended that there is no evidence of exemption application of the writ petitioners having been disposed of by the Government. The learned Counsel strenuously contends that the Special Court adopted a very peculiar procedure and disposed of the case even without following the fundamental principles of procedural laws. The writ petitioners are condemned without providing any opportunity of being heard.

20. The learned Advocate-General contended that the required notifications under Sub-section (1) of Section 10 of the ULC Act have been published and in terms of the notifications, the lands shall be deemed to have been acquired by the Government and vested absolutely in the State Government free from all encumbrances with effect from 10-10-1994. It is contended that even an attempt to grab the land would amount to "land grabbing" within the meaning of that expression employed under the provisions of the Act, There has been an organised attempt by the writ petitioners as well as others who are the parties in LGC to grab the land belonging to the State. The learned Advocate-General also

contended that the agreement of sale purported to have been executed by the writ petitioners and their predecessor-in-title in favour of the second respondent-society is void and inoperative. The learned Advocate-General also submitted that W.P. No. 23474 of 1996 filed by some of the parties in LGC has been dismissed by this Court by the order dated 6-11-1996 and the SLP filed against the said judgment has been withdrawn by them. Therefore, there is no possibility to take a different view other than the one taken by a co-ordinate Bench of this Court.

21. We have given our anxious consideration to the rival submissions made before us.

22. We must express our unhappiness and concern for the manner in which the Special Court had disposed of the Land Grabbing Case. The Special Court did not record any evidence whatsoever in order to record its findings. No documents have been filed and exhibited before the Special Court. Yet, the Special Court made caustic aspersions upon all the parties before it including the writ petitioners who are admittedly the owners of the application schedule land. The writ petitioners, may have become surplus landholders. On the strength of the orders purported to have been passed by the competent authority and the Special Officer, the writ petitioners are also declared and characterised as "land grabbers" within the meaning of that expression employed under the provisions of the Act. It is not known as to on what basis the Special Court came to such a conclusion. No doubt, during the course of hearing of this writ petition, the learned Advocate-General invited our attention to the notifications purported to have been issued under Sub-section (1) of Section 10 of the ULC Act relating to the land in question. But the question that falls for consideration is as to whether the said documents were available before the Special Court for recording its findings. That apart, the orders purported to have been passed under Sections 8(4) and 9 of the ULC Act are not filed into the Special Court. There is no evidence that the writ petitioners have been served with the required notices under the provisions of the ULC Act declaring them to be the surplus landholders. We cannot, for the first time, look into the records and mark them as exhibits and record the findings by ourselves. The findings, in our considered opinion, recorded by the Special Court are not based upon any evidence whatsoever. Therefore, the findings of this Special Court are vitiated being perverse in their nature.

23. We are not inclined to go into the question as to the nature of the agreement of sale dated 10-5-1981 purported to have been executed by the writ petitioners and their predecessor-in-title in favour of the second respondent-society for the reason that the same has not been filed into the Special Court and the Special Court did not had the advantage of perusing the same for declaring it to be void and inoperative. No doubt, it is urged by the learned Counsel for the writ petitioners that the agreement of sale itself does not amount to any transfer or alienation of land within the meaning of sub-section (3) of Section 5 of the ULC

Act. The learned Counsel for the writ petitioners relied upon the very scheme framed by the Government of Andhra Pradesh in G.O. Ms. No. 136, Revenue, dated 28-1-1981, which gave an impetus to the promotion of the cooperative house building societies and it was issued with an object to curb the speculative transactions. We do not propose to go into that question for the first time in this writ petition.

24. It is very well settled that this Court does not exercise any appellate jurisdiction over the orders/judgments passed by the Special Court. This Court itself cannot record its own findings, which are otherwise required to be recorded by the Special Court. This Court in exercise of its certiorari jurisdiction is entitled to interfere and quash the orders of the Special Court, if such orders are based on no evidence.

25. This Court in *Shalivahana Builders Private Limited and Another Vs. Sri Ganapathy Co-operative Housing Society and Others*, (DB), held:

"It is thus clear that an act of land grabbing involves taking of any land belonging to Government, etc., or any other private person unauthorisedly, unfairly, greedily, either forcibly, violently, unscrupulously or otherwise but without any lawful entitlement. Taking possession of the land without any lawful entitlement thereto is the sine qua non to hold a person to be a land grabber. It may be noted, to make out a case that a person is a land grabber the applicant must aver and prove both the ingredients - the factum as well as the intention. Unless a person unauthorisedly and without any lawful entitlement thereto enters or intrudes into a land forcibly or otherwise, he cannot be held to be a land grabber. The emphasis is on taking possession without any lawful entitlement.

There is no dispute whatsoever that an extent of Ac.7.24 guntas out of the total extent of Ac.9.26 guntas situated in S.No. 73 of Marredpally Village has been acquired for a public purpose. Yet the respondents-applicants in their application filed before the Tribunal specified the entire extent of Ac.9.26 guntas as the application schedule land. Boundaries of the entire extent of land are accordingly shown. No doubt in the prayer portion the respondents-applicants prayed to declare the petitioners as land grabbers in respect of land admeasuring Ac.1.38 gunlas only. But the details in respect of the land alleged to have been grabbed are not described in the application. In the circumstances, the conclusion that the respondents-applicants failed to set up specific and precise claim in their application is inescapable. Making allegation of land grabbing and characterising a person as a land grabber is fraught with serious consequences. The application shall contain a precise, specific and definite allegation of any land grabbing or alleged act of land grabbing since an alleged act of land grabbing is held to be sufficient to invoke the jurisdiction of the Special Court. At any rate, the allegations must be specific and definite. The details of the land alleged to have been grabbed also must be specifically stated. There should be no room for any fishing and roving enquiry. The applicant must aver and prove the factum as well as the intention to grab the land without any lawful entitlement thereto."

26. The Supreme Court in *Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others*, , while construing the expression "land grabbing" held:

"A combined reading of clauses (d) and (e) would suggest that to bring a person within the meaning of the expression "land grabber" it must be shown that: (i) (a) he has taken unauthorisedly, unfairly, greedily, snatched forcibly, violently or unscrupulously any land belonging to the Government or a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person; (b) without any lawful entitlement; and (c) with a view to illegally taking possession of such lands, or enter or create illegal tenancies or lease and licence agreements or any other illegal agreements in respect of such lands or to construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation of unauthorised structures; or (ii) he has given financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon; or (iii) he is collecting or attempting to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation; or (iv) he is abetting the doing of any of the abovementioned acts; or (v) that he is the successor-in-interest of any such persons.

It must be borne in mind that for purposes of taking cognizance of a case under the Act, existence of an allegation of any act of land grabbing is the *sine qua non* and not the truth or otherwise of such an allegation. But to hold that a person is a land grabber it is necessary to find that the allegations satisfying the requirements of land grabbing are proved" (Emphasis is of ours).

27. There is no finding in the instant case as to when the Government had taken over the possession of the land and when it had been dispossessed by the writ petitioners herein. On the other hand, in the counter affidavit filed by the State in the Special Court, it is stated that separate steps were being taken for recovery of surplus land. In our view, taking possession of the land without any lawful entitlement thereto is the *sine qua non* to hold a person to be a land grabber. In order to hold a person to be a land grabber, it must be clearly averred and proved both the ingredients - the *factum* as well as the intention. Unless a person unauthorisedly and without any lawful entitlement thereto enters or intrudes into a land forcibly or otherwise, he cannot be held to be a land grabber. The emphasis is on taking possession without any lawful entitlement.

28. None of these aspects have been taken into consideration by the Special Court in declaring the writ petitioners to be the land grabbers. They have been equated with others who have made some constructions without any lawful entitlement thereto. The collusion and conspiracy between the petitioners-owners and others is not based on any material evidence available on record.

29. The mere assertion that publication of notification under sub-section (1) of Section 10 of the ULC Act is the conclusive proof of vesting of surplus land in the

State is required to be critically examined.

30. Sub-section (1) of Section 10 of the ULC Act says that after the service of the statement u/s 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that such vacant land is to be acquired by the concerned State Government; and the claims of all persons interested in such vacant land may be made by them etc.

31. Sub-section (2) of Section 10 of the ULC Act mandates the consideration of the claims of the persons interested in the vacant land. Sub-section (3) of Section 10 in its turn says that the competent authority may, at any time after the publication of the notification under Sub-section (1), declare that the excess vacant land referred to in the notification published under Sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

32. Thereafter, the competent authority is required to issue a notice in writing under Sub-section (5) of Section 10 and order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in this behalf within the prescribed time. If any person refused or fails to comply with an order made under Sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary.

33. There is no evidence whatsoever that any such procedure has been followed and a notice has been issued to the persons in possession including the writ petitioners for taking delivery of the surplus vacant land. There is no evidence that the competent authority had taken over the possession and accordingly made it available to the State Government. The question of forcible dispossession of the State Government as such from the surplus vacant land does not arise. In the absence of any evidence and findings, we find it difficult to sustain the order passed by the Special Court, which went on making observations characterising the writ petitioners as land grabbers. The observations are ipse dixit in their nature and cannot be equated to that of the findings and conclusions reached by the Special Court based on evidence.

34. We are required to consider the submission made by the learned Advocate-General that there is no reason to take a different view other than the one taken by a co-ordinate Bench of this Court in W.P. No. 23474 of 1996 filed by some of the respondents in LGC. This Court dismissed the said writ petition. None of the contentions urged in this writ petition were urged therein. The petitioners therein were found to be in possession without any lawful entitlement. In the instance case, the writ petitioners admittedly are the owners of the land. May be they

have become surplus landholders. Unless it is satisfactorily established that the writ petitioners were duly served with all the proceedings under the provisions of the ULC Act and such proceedings remained unchallenged in spite of service and unless it is further pleaded and established that the State had already taken over the possession of the land after its vesting in the State, the writ petitioners cannot be declared or termed or characterised as land grabbers.

35. We have not expressed any opinion whatsoever on any one of these aspects of the matter referred to hereinabove. They are required to be gone into by the Special Court for which purpose the evidence has to be let in and findings are to be recorded. The Special Court merely indulged in some guesswork and carried away by its own notions and perceived public interest. Some role in the nefarious activity of land grabbing is attributed to the writ petitioners by the Special Court without there being any proper foundation in the pleadings and evidence on record. The observations made by the Special Court are of imaginary in nature. We find it difficult to sustain the impugned judgment.

36. No other point is urged.

37. For the aforesaid reasons, the impugned judgment so far as the writ petitioners is concerned, is set aside. LGC shall stand restored to its original file. The matter is remitted to the Special Court for fresh consideration in accordance with law.

38. It shall be open to the State to lead evidence in support of its assertion that the writ petitioners and their predecessor-in title have grabbed the land belonging to the State.

39. So far as the applicants and other respondents in LGC are concerned, the judgment of the Special Court has become final and this order of ours shall have no bearing upon the same. The proceedings as against them have become final and cannot be reopened at this stage.

40. It is needless to observe that we have not expressed any opinion whatsoever on the question of title of the State and its vesting and even on the question as to whether the writ petitioners are the "land grabbers" or not within the meaning of that expression employed under the provisions of the Act. These aspects are required to be gone into by the Special Court.

41. Since the matter is pending ever since 1995, we consider it appropriate to direct the Special Court to take up the matter for disposal on day-to-day basis and decide the same within four months from the date of receipt of a copy of this order. The parties shall be at liberty to produce and lead evidence in support of their respective contentions.

42. The Writ Petition is accordingly allowed. No order as to costs. The Review Application is also accordingly ordered.