

(2019) 03 KAR CK 0045

In the Karnataka High Court

Case No : Writ Petition No. 10596 Of 2019 (Gm-Cpc)

Joseph Saldhana

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Karnataka Land Grabbing Prohibition Act, 2011 — Section 2(d), 2(e), 2(f), 9, 9(1), 9(2), 9(3), 9(4), 10, 20

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2, 2(e), 2(2)(I), 3, 6, 6(1)

Constitution Of India, 1950 — Article 14, 19(1)(e), 21, 32, 136, 226, 227, 300A

Citation : (2019) 03 KAR CK 0045

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : Sachin B.S, D.R.Anandeeswar

Final Decision : Dismissed

Judgement

1. The petitioner - plaintiff filed the present writ petition against the order dated 30.10.2018 on I.A. No.6 in O.S. No.47/2010 on the file of the 1st Additional Civil Judge, Mangaluru, Dakshina Kannada allowing the application filed by the respondents - defendants under Section 20 of the Karnataka Land Grabbing Prohibition Act 2011 to transfer the case to the Special Court under the Karnataka Land Grabbing Prohibition Act, 2011 (hereinafter called 'the Act' for short).

I FACTS OF THE CASE

2. The mother of the plaintiff-petitioner herein came in hostile possession of the suit property bearing door No.8-140A consisting of a residential house in the year 1977. Thereafter, the plaintiff-petitioner improved the said house by spending huge amount of money, obtained electricity connection, paying taxes regularly to the local body and he is in possession of the same continuously. The hostile possession of the plaintiff, renovation, planting of coconut trees and other

improvements made over the suit property are well within the knowledge of the defendants. The petitioner is in actual, hostile continuous and uninterrupted possession over the suit schedule property for more than 30 years and thereby, perfected his right, title over the property by way of adverse possession and hence, the defendants have lost their right, title and interest over the suit property. As, the officials of the defendants tried to dispossess the petitioner from the suit property, he has filed a suit for declaration of title and consequential injunction restraining the defendants from dispossessing the petitioner and not to demolish the construction made over the suit property.

3. During the pendency of the above suit, the defendants-respondents herein have filed an application - IA. No.6 under Section-20 of the Act, seeking to transfer the said suit to the Special Court, constituted under the Act for adjudication and disposal. The petitioner - plaintiff filed objections to the said application. The trial Court considering the application and the objections by the impugned order allowed the said application and ordered for transfer of the suit to the Special Court. Hence, the present writ petition is filed for the reliefs sought for.

II ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PARTIES

4. I have heard the learned counsel for the parties to the lis.

5. Sri. B.S. Sachin, learned counsel appearing for the petitioner - plaintiff vehemently contended that so as to transfer the suit to the special Court, a person who is in possession of the government land should be a land grabber. But in the case on hand the plaintiff is in continuous possession and enjoyment of the suit property from 30 years, openly to the knowledge of defendants and thereby, he has perfected his title over the suit property by way of adverse possession and that the defendants have lost their right, title and interest over the suit property. The trial Court, instead of transferring the suit, ought to have framed preliminary issue as regards maintainability of the suit and proceeded with the trial of the suit. He further submits that the learned judge of the trial Court was not justified in transferring the case to the special Court and prays for allowing the present writ petition by setting aside the impugned order passed by the trial Court.

6. In support of his contentions, he relied upon the judgment of the co-ordinate Bench of this Court in W.P.No.35369/2018 dated 12.10.2018 (Sri. Gangadhara & others -vs- the State of Karnataka & others).

7. Per contra, Sri. D.R. Anandeeswar, learned HCGP., appearing for the defendants-respondents drew the attention of the Court to the averments made in paragraph-3 of the plaint and submitted that the land in question belonging to the Government and hence, the provisions of Section 2(f) of the Act would attract. On 16.04.2010, the defendant No.3 (Tahsildar) has filed written statement and by filing a memo, the defendants- 1 & 2 have adopted the written statement filed on behalf of defendant No.3. He further submitted that the

petitioner has no right or title over the suit land and he is in unauthorized occupation of the land belonging to the Government and hence, the learned judge of the trial Court was justified in allowing the application filed by the Government. He further contended that the special Court is constituted only for the purpose of speedy trial and disposal of the suit. Hence, the trial Court rightly ordered for transfer of the suit to the Special Court and prays for dismissal of the writ petition.

III POINT FOR DETERMINATION

8. In view of the above rival contentions urged by the learned counsel for the parties, the only point that arises for consideration in this writ petition is:

"Whether the trial Court is justified in passing the impugned order, in exercise of power under Section-20 of the Karnataka Land Grabbing Prohibition Act, 2011?"

IV CONSIDERATION

9. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record carefully.

10. The Government of Karnataka, with an object to curb organized attempts to grab the lands belonging to the Government, wakf or the Hindu Religious Institutions and Charitable Endowments, local authorities or other statutory or non-statutory bodies owned or controlled or managed by the Government, enacted law, namely, the Karnataka Land Grabbing Prohibition Act, 2011, which came into effect from 20.10.2014.

11. The definitions of the provisions of Section 2 (d), (e), and (f) of the Act reads as under:-

(d) "Land" includes,-

(i) land belonging to the Government, Wakf or the Hindu Religious Institutions and Charitable Endowments, a local authority, a statutory or non statutory body owned, controlled or managed by the Government;

(ii) rights in or over land, benefits to arise out of land, and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth;

(e)"land grabber" means a person or group of persons or a Society, who commits or has committed land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest;

(f) "land grabbing" means every activity of grabbing of any land, without any lawful entitlement and with a view to illegally taking possession of such land, or

enter into or create illegal tenancies or lease and licences agreements construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and license basis for construction, or use and occupation, of unauthorised structures; and the term "to grab land" shall be construed accordingly;

12. A plain reading of the provisions of Section 2(d) of the Act, clearly indicate that 'the land', referred to in the Act, includes the land belonging to the Government, Wakf or the Hindu Religious Institutions, Charitable Endowments, local authority or any statutory body, owned, controlled or managed by the Government and rights in or over land, benefits to arise out of land, and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth.

'Land grabber', as defined under Section 2(e) means a person or group of persons or a Society, who commits or has committed land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest;

'land grabbing', as contained in Section 2(f) means, every activity of grabbing of any land, without any lawful entitlement and with a view to illegally taking possession of such land, or enter into or create illegal tenancies or lease and licenses agreements construct unauthorized structures thereon etc.

13. The provisions of section-9, 10 & 20 of the Act, reads as under:

9. Procedure and powers of the Special Courts.- (1) The Special Court may, either suomoto or on application made by any person, officer or authority take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed or offences specified in Chapter XIV-A of the Karnataka Land Revenue Act, 1964 whether before or after the commencement of this Act, and pass such orders including orders by way of interim directions as it deems fit.

(2) The Special Court shall for the purpose of taking cognizance of the case, consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved or in the interest of justice required or any other relevant matter.

(3) In respect of an alleged act of land grabbing or the determination of questions of title and ownership to, or lawful possession of any land grabbed under this Act and offences specified in Chapter XIV-A of the Karnataka Land Revenue Act, 1964, shall be tried only in a Special Court constituted for the area in which the land grabbed is situated; and the decision of the Special Court shall be final:

Provided that if, in the opinion of the Special Court, any application filed before it, is prima facie frivolous or vexatious, it shall reject the same without any further enquiry.

(4) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed. The evidence admitted during the criminal proceeding may be made use of while trying the civil liability. But additional evidence, if any adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability. Any person accused of land grabbing or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charge made against him or any person charged together with him in the criminal proceeding:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any of the parties or the special court or give rise to any presumption against himself or any person charged together with him at the same proceeding.

10. Special Court to have the powers of the Civil Court and the Court of Session.- Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of Sessions and shall have all the powers of a Civil Court and a Court of Sessions and person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

20. Transfer of pending cases.- 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."

14. A careful perusal of the provisions of Section-9 (1), (2), (3) & (4) of the Act, clearly depicts that the Special Court is empowered to try every case and determine the questions related to title and ownership or lawful possession of any land grabbed under this Act and the offences specified in Chapter XIV-A of the Karnataka Land Revenue Act, 1964 shall be tried only in a Special Court constituted for the area in which the land grabbed is situated and the decision of the Special Court shall be final.

The provisions of Section-10 of the Act, clearly indicate that both the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 shall apply to the proceedings before the Special Court and for the purposes of the provisions

of the said enactments, Special Court shall be deemed to be a Civil Court.

The provisions of Section-20 of the Act, clearly depicts that 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.

15. It is well settled law that in civic society, town planning indisputably plays an important role. Unauthorized occupation by the encroachers in the areas which are meant for planned development goes a long way in thwarting the goals sought to be achieved by such town planning. There are several factors including flora and fauna, water quality maintenance and impact on health and rehabilitation are relevant factors for the purpose of maintenance of ecology. Emphasizing the need of adherence to sustainable development principle for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right and "sustainable development" is to be treated as an integral part of "life", as envisaged under Article-21 of the Constitution of India.

16. As contemplated under the Act, summary proceedings can be initiated by the Government, against a person, who is in unauthorized occupation of any land which is "the property of Government". However, where the facts raised is a bona fide dispute regarding the title between the Government and the occupant, the Government cannot take a unilateral decision in its own favour that, the property belongs to it and on the basis of such decision take recourse to the summary remedy provided under the Act. Bona fides on the part of such occupant's can be inferred from his occupation for a long period. Such dispute must be adjudicated upon by the ordinary courts of law. My view is fortified by the dictum of the Hon'ble Apex Court, in the case of Government of Andhra Pradesh -vs- Thummala Krishna Rao & another reported in (1982) 2 Supreme Court Cases 134, wherein the Hon'ble Apex Court while considering the provisions of Section 6 of the Andhra Pradesh Land Grabbing Prohibition Act held at Para 8, 9 and 10 held as under:

8. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". In regard to property described in sub- sections (I) and (2) of section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorised occupation of property which is declared by section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously which can only be done by resorting to the summary remedy provided by the Act. But section 6 (1) which confers the power of summary eviction on the Government limits that

power to cases in which a person is in unauthorised occupation of a land "for which he is liable to pay assessment under section 3". Section 3, in turn, refers to unauthorised occupation of any land "which is the property of Government". If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University. for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

9. The view of the Division Bench that the summary remedy provided for by section 6 cannot be resorted to unless the alleged encroachment is of "a very recent origin", cannot be stretched too far. That was also the view taken by the learned single Judge himself in another case which is reported in *Meherunnissa Begum v. State of A.P.* which was affirmed by a Division Bench. It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the Ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.

10. The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary inquiry contemplated by sections 6 and 7 of the Act. The long

possession of the respondents and their predecessors-in- title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddin from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily.

17. The fundamental rights guaranteed under Articles-300-A and 21 of the Constitution of India would not be given a go-bye either by the authority or by rich and influential persons or by musclemen. If such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe nor can the citizens protect their properties and the Courts must accord legitimacy and legality only to possession taken in due course of law. My view is fortified by the Judgment of the Hon'ble Apex Court, in the case of S.R. Ejaz -vs-T.N. Handloom Weavers' Co-operative society Ltd., reported in (2002) 3 Supreme Court Cases 137, wherein, the Hon'ble Apex Court held as under:

8. In our view, if such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe nor the citizens can protect their properties. Law frowns upon such conduct. The Court accords legitimacy and legality only to possession taken in due course of law. If such actions are condoned, the fundamental rights guaranteed under the Constitution of India or the legal rights would be given go-by either by the authority or by rich and influential persons or by musclemen. Law of jungle will prevail and 'might would be right' instead of 'right being might'. This Court in State of U.P. vs. Maharaja Dharmender Prasad Singh dealt with the provisions of Transfer of Property Act and observed that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry of earlier termination of the lease by forfeiture or otherwise. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited. The Court also held that there is no question of Government withdrawing or appropriating to it an extra judicial right of re-entry and the possession of the property can be resumed by the Government only in a manner known to or recognized by law.

18. When the encroacher approaches the Court, either the doors of the Court are closed to them, solely on the ground that they are the encroachers. The Court would examine the right to relief, if any of the encroacher. The State or local body should place before the Court the factual and legal position. The Hon'ble Apex Court, while considering the rights of the parties under Articles-226, 32, 136, 21 & 19 (1) (e) of the Constitution of India, in the case of Ahmedabad Municipal Corporation -vs- Nawab Khan Gulab Khan & others reported in (1997)

11 Supreme Court Cases 121 at paragraphs 8, 22 and 30 held as under:

8. It is for the Court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just or it is otherwise. Footpath, street or pavement are public property which are intended to serve the convenience of general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they carved out from portions of public roads. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. The claim of the pavement dwellers to construct huts on the pavement or road is a permanent obstruction to free passage of traffic and pedestrians' safety and security. Therefore, it would be impermissible to permit or to make use of the pavement for private purpose. They should allow passing and re-passing by the pedestrians. No one has a right to make use of a public property for their private purpose without the requisite authorization from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or re-passing by the pedestrians.

22. Empirical study of urban and rural population in India discloses that due to lack of civic facilities and means of livelihood people from rural areas constantly keep migrating to the urban areas resulting in mushroom growth of slums and encroachment of the pavements/footpaths etc. Every Municipal Corporation has statutory obligation to provide free flow of traffic and pedestrians right to pass and re-pass freely and safely; as its concomitance, the Corporation/Municipality have statutory duty to have the encroachments removed. It would, therefore, be inexpedient to give any direction not to remove, or to allow the encroachment on the pavements or footpaths which is a constant source of unhygienic ecology, traffic hazards and risk prone to lives of the pedestrians. It would, therefore, be necessary to permit the Corporation to exercise the statutory powers to prevent encroachment of the pavements/footpaths and to prevent construction thereon. As held earlier, the Corporation should always be vigilant and should not allow encroachments of the pavements and foot paths. As soon as they notice any encroachments they should forthwith take steps to have them removed and would not allowed them to settle down for a long time. It is stated in their affidavit that they are giving 21 days notice before taking action for ejectment of the encroachers. That procedure, in our view, is a fair procedure and, therefore, the right to hearing before taking action for ejectment is not necessary in the fact-situation. But the Commissioner should ensure that everyone is served and if it is not possible for reasons to be recorded in the file, through fixture of the notice on the hutment, duly attested by two independent panchas. This procedure would avoid the dispute that they were not give opportunity; further prolongation of the encroachment and hazard to the traffic and safety of the

pedestrians.

30. Encroachment of public property undoubtedly obstructs and upsets planned development, ecology and sanitation. Public property needs to be preserved and protected. It is but the duty of the State and local bodies to ensure the same. This would answer the second question. As regards the fourth question, it is to reiterate that judicial review is the basic structure of the Constitution. Every citizen has a fundamental right to redress the perceived legal injury through judicial process. The encroachers are no exceptions to that Constitutional right to judicial redressal. The Constitutional Court, therefore, has a Constitutional duty as sentinel *qui vive* to enforce the right of a citizen when he approaches the Court for perceived legal injury, provided he establishes that he has a right to remedy. When an encroacher approaches the Court, the Court is required to examine whether the encroacher had any right and to what extent he would be given protection and relief. In that behalf, it is the salutary duty of the State or the local bodies or any instrumentality to assist the Court by placing necessary factual position and legal setting for adjudication and for granting/refusing relief appropriate to the situation. Therefore, the mere fact that the encroachers have approached the Court would be no ground to dismiss their cases. The contention of the appellant-Corporation that the intervention of the Court would aid impetus to the encroachers to abuse the judicial process is untenable. As held earlier, if the appellant-Corporation or any local body or the State acts with vigilance and prevents encroachment immediately, the need to follow the procedure enshrined as a inbuilt fair procedure would be obviated. But if they allow the encroachers to remain in settled possession sufficiently for long time, which would be a fact to be established in an appropriate case, necessarily suitable procedure would be required to be adopted to meet the fact situation and that, therefore, it would be for the respondent concerned and also for the petitioner to establish the respective claims and it is for the Court to consider as to what would be the appropriate procedure required to be adopted in the given facts and circumstances.

19. The Hon'ble Supreme Court, in the case of *M/S. Vishal Properties Pvt. Ltd., - vs- State of U.P* (AIR 2008 SC 183), while considering applicability of concept of equality was pleased to observe that under Article 14 of the Constitution of India is not meant to perpetuate an illegality. It provides for positive equality and not negative equality. Therefore, the Courts are not bound to direct any Authority to repeat the wrong action done by it earlier. It is true that Article-14 of the Constitution embodies a guarantee against arbitrariness but it does not assume uniformity in erroneous actions or decisions. It is trite to say that guarantee of equality being a positive concept, cannot be enforced in a negative manner. To put it differently, if an illegality or irregularity has been committed in favour of an individual or even a group of individuals, others though falling in the same category, cannot invoke the jurisdiction of the writ courts for enforcement of the same irregularity on the reasoning that the similar benefit has been denied to them. Any direction for enforcement of such claim shall tantamount to

perpetuating an illegality, which cannot be permitted. A claim based on equality clause has to be just and legal.

20. The Apex Court, in the case of *State of Himachal Pradesh -vs- Surinder Singh Banolta* (AIR 2007 SC 903), while considering the matter relating to disqualifications of land encroacher was pleased to observe that it cannot be held that the Legislature was unaware that after the constitutional amendment under which Part IX and IX-A came to be introduced in the Constitution of India setting out inter alia a bar to interference by the Court in electoral matters. The encroachment on the Government land or public property which includes public land, is an act which invites disqualification. However, when there is disqualification from being elected or continuing as a member for having committed encroachment on the Government land or public property, then, the concept has to be understood in the context of what can be described as Government land or public property.

21. The Hon'ble Apex Court, in the case of *Konda Lakshmana Bapuji -vs- Government of Andhra Pradesh & others* reported in (2002) 3 Supreme Court Cases-258, while considering ambit of the word

"land grabber", as defined under Section 2(e) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, observed that the word "grab" means to seize, grasp, or snatch forcibly or suddenly with the hand, hence, to take possession of suddenly, violently, or dishonestly. The Hon'ble Apex Court was pleased to observe as under:

37. The various meanings, noted above, disclose that the term "grab" has a broad meaning - to take unauthorisedly, greedily or unfairly - and a narrow meaning of snatching forcibly or violently or by unscrupulous means. Having regard to the object of the Act and the various provisions employing that term we are of the view that the term "grab" is used in the Act in both its narrow as well as broad meanings. Thus understood the ingredients of the expression "land grabbing" would comprise of (i) the factum of an activity of taking possession of any land forcibly, violently, unscrupulously, unfairly or greedily without any lawful entitlement and (ii) the mens rea/intention -- "with the intention of/with a view to" (a) illegally taking possession of such lands or (b) enter into or create illegal tenancies, lease and licences agreements or any other illegal agreements in respect of such lands; or (c) to construct unauthorised structures thereon for sale or hire; or (d) to give such lands to any person on (i) rental or (ii) lease and licence basis for construction, or (iii) use and occupation of unauthorised structures.

38. 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 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 licences 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 above- mentioned acts; or (v) that he is the successor-in-interest of any such persons.

22. The Hon'ble Apex Court, in the case of State of A.P -vs- Smt. Prameela Modi reported in 2006 (1) Scale-38, while considering the exclusive jurisdiction of Special Court to decide the question as to title/ownership/lawful possession, was pleased to observe as here under:

"the Special Court can play the role of a civil Court and decide the disputed question of title and possession. The extent of jurisdiction as is permitted by the statute, therefore, is rather wide in its application. Three specific situations have been noted namely:

(i) jurisdiction can be had in regard to a case in respect of an alleged act of land grabbing,

(ii) jurisdiction can be had in a case where determination of question of title and ownership are involved and

(iii) jurisdiction can be had where lawful possession of any land grabbed under the Act is involved. All these three specific situations, as envisaged by and under the statute would be triable in the Special Court. The condition precedent for assuming jurisdiction by the Special Court is that the case must have arisen out of any alleged act of land grabbing."

V CONCLUSION

23. In view of the dictums of the Hon'ble Apex Court, referred supra, it is manifestly clear that the Special Court is competent to adjudicate the question of title, ownership, or lawful possession of any land alleged to have been grabbed and the matters pertaining to the act of 'land grabbing' are triable by the Special Court. Having regard to the non-obstante clause used therein at the inception, it is obvious that the jurisdiction of the Special Court exclusive. The Special Court is competent to try and determine the issue of title, right to, or possession of the land alleged to have been grabbed. In the case on hand, on careful scrutiny of the averments made in paragraph-3 of the plaint, it is seen that the plaintiff-petitioner herein has categorically stated that he is in adverse possession over the land belonging to the Government for a period of 30 years. Once it is

admitted that the land belongs to the Government, the provisions of Karnataka Land Grabbing Prohibition Act, 2011, would attract. However, the same requires to be determined by the special Court after full fledged trial/enquiry and on evaluation of the oral and documentary evidence that may be adduced and produced by both the parties. The learned judge of the Trial Court while considering the application U/S. 20 of the Act, filed by the defendants-respondents herein has formulated the points for determination and passed well reasoned order in exercise of power conferred under Section-20 of the Act. Accordingly the point raised in the writ petition is answered in the affirmative holding that the Trial Court is justified in passing the impugned order.

24. The decision in the case of Gangadhara referred Supra, relied on by the learned counsel for the petitioner has no application to the facts and circumstances of the present case and the impugned order passed by the trial Court is a well crafted order.

25. In view of the aforesaid reasons, this Court is of the considered opinion that the learned judge of the Trial court is justified in passing the impugned order, in exercise of his power under Section-20 of the Act. The petitioner has not made out any ground to interfere with the impugned order, in exercise of power under Article 227 Constitution of India. Accordingly, the writ petition is dismissed, without expressing any opinion on merits of the suit.

All contentions of both the parties are kept open.

Ordered accordingly.