
(2006) 09 AP CK 0056
In the Andhra Pradesh High Court
Case No : S.A. No. 277 of 1996

K. Jamal Khan (died) and Another	Vs	APPELLANT
The Cuddapah Municipality		RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Andhra Pradesh Land Encroachment Act, 1905 — Section 7
Andhra Pradesh Municipalities Act, 1965 — Section 194(1), 37, 37(1), 37(2)

Citation : (2006) 09 AP CK 0056

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.N. Narasimha Reddy, for the Appellant;

Judgement

P.S. Narayana, J.—Heard the Counsel.

2. The following substantial questions of law arise for consideration in this Second Appeal:

1. Whether the judgment in O.S. No. 450/77 on the file of II Additional Munsif Magistrate, Cuddapah dated 5-7-1982 does not operate as res judicata and that the plaintiffs are not entitled to continue in possession and enjoyment of the suit site unless and until alternative accommodation is shown to them, and
2. When the property of the Government is vested in Municipality u/s 37(1) of A.P. Municipalities Act, 1965, whether the suit filed against the Municipality cannot be said to be not maintainable in the absence of the Government.
3. The unsuccessful plaintiffs aggrieved by the reversing Judgment and Decree made in A.S. No. 33/94 on the file of II Additional District Judge, Cuddapah had preferred this Second Appeal. The first appellant died and appellant No. 3 was brought on record by order dated 17-3-1997 in C.M.P. No. 19260/96. The respondent herein is the defendant in O.S. No. 111/90 on the file of Principal District Munsif, Cuddapah. The defendant in the said suit is Cuddapah Municipality, represented by its Commissioner and it is stated that at present it is

Cuddapah Municipal Corporation. The suit was filed for the relief of permanent injunction and the Court of first instance on settlement of Issues, recorded the evidence of P.W.1 to P.W.2 and D.W.1, marked Exs. A-1 to A-6 and ultimately decreed the suit. Aggrieved by the same the matter was carried by way of Appeal A.S. No. 33/90 on the file of II Additional District Judge, Cuddapah by the then Cuddapah Municipality and the learned Judge having arrived at a conclusion that the plaint schedule site belongs to the Government and a suit of this nature as against the defendant Municipality without impleading the Government of Andhra Pradesh as a party cannot be maintained, allowed the Appeal. Aggrieved by the same, the present Second Appeal is preferred.

4. The facts are not in serious controversy between the parties and the decree made in O.S. No. 450/77 which was confirmed in A.S. No. 94/82, also are not in serious dispute. Section 37 of the A.P. Municipalities Act, 1965 dealing with Vacant lands belonging to Government situated in the municipality to be in possession or under the control of the Council, reads as hereunder:

1. On and from the date of the commencement of this Act, all vacant lands belonging to or under the control of the Government situated within the local limits of a municipality shall, subject to the provisions of Sub-sections (2) and (3) and to such conditions as may be prescribed, be deemed to be in the possession or under the control of the council concerned for purposes of this Act.

Explanation:- For the purpose of this section vacant land includes a poramboke, donka or kunta.

2. The council shall keep all such vacant lands free from encumbrances and shall restore the possession or control of any such land to the Government free of cost whenever it is required by the Government for their use for any public purpose or for purpose of alienation to any person or local authority. 3. The council shall not

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(a) construct or permit the construction of any building or other structure on any such vacant land;

(b) use or permit the use of such vacant land for any permanent purpose; unless the prior permission of the Government is obtained by the council therefore, after furnishing such information as the Government may require, including the usefulness of the land or any housing scheme;

(c) alienate such vacant land to any third party.

Most probably, on the ground that the cause of action for the plaintiffs arose as against the then Cuddapah Municipality, the suit was filed as against the then Cuddapah Municipality alone. It is needless to say that as already referred to supra, at present, the Cuddapah Municipality is Cuddapah Municipal Corporation. In view of the facts and circumstances, the finding of the appellate Court that because of the non-impleading of the necessary party, the Government of Andhra Pradesh, the suit is not maintainable, prima facie appears to be

unsustainable especially in the light of the Judgment and Decree in O.S. No. 450/77 as confirmed in A.S. No. 94/82 on the file of II Additional District Judge, Cuddapah. On facts it is stated that however the plaintiffs had been in permissive possession under the then Municipality for some time. In K. Anjani Kumar v. Special Tahsildar W.P. No. 11704/84 dated 13-7-1988 it was held that the Tahsildar has jurisdiction to order vacating certain land belonging to the Government in a Municipality and in possession of an occupier, but however the jurisdiction u/s 7 of the A.P. Land Encroachment Act to be followed before initiation of the action. In K. Rama Krishna Vs. Municipal Council, Anakapalle, Visakhapatnam District, while dealing with Section 37(2) and 194(1)(b) of the A.P. Municipalities Act, 1965 where the petitioner claimed to be in possession of certain Government land in Municipal limits raising thatched house by duly paying encroachment fee, the land though belonging to the Government, Municipality is deemed to be in possession of the said land as trustee and the resolution passed by Municipal Council to hand over the said site for construction of a hospital which was challenged by the petitioner as being without jurisdiction, it was held that the said purpose being a purpose recognised by Section 37(2) of the A.P. Municipalities Act, 1965, such resolution passed cannot be said to be illegal, but however the petitioner cannot be evicted without prior notice. These questions agitated before this Court need not detain this Court any longer for the reason that the main grievance of the appellants herein appears to be that till alternative accommodation is shown, their possession cannot be disturbed in the light of the Judgment and Decree in O.S. No. 450/77 on the file of II Additional Munsif Magistrate, Cuddapah. The learned Standing Counsel Sri Newton states that in fact alternative accommodation was provided to the appellants/plaintiffs. The same is hereby recorded. In view of the same, the other questions which had been argued in elaboration need no serious consideration at the hands of this Court. The said statement made by the learned Standing Council representing the Municipal Corporation is hereby recorded and accordingly the Second Appeal is hereby closed. No costs.