
(1997) 04 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 25370 and 25683 of 1996

K. Mohan Lal and N. Venkatesh

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 7(3)
Constitution of India, 1950 — Article 226, 227, 233, 234, 235

Citation : (1997) 4 ALT 220

Hon'ble Judges : P.S. Mishra, C.J.;V. Raja Gopala Reddy, J

Bench : Division Bench

Advocate : K.V. Simhadri and S. Venkata Reddy, for the Appellant; Advocate General and P. Sridhar Reddy, N. Subba Reddy, K. Suresh Reddy, B. Krishna Mohan, M.S. Ramachandra Rao, K.G. Kannabhiran and T. Bali Reddy, for the Respondent

Judgement

P.S. Mishra, C.J.—The first petition by a practising Advocate and the second on a representation by one Sri N. Venkatesh, which is made on the basis of a newspaper report having the headline "appointment in Land Grab Court raises eyebrows", under Article 226 of the Constitution of India are primarily directed to the validity of Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 and the appointment of the Judicial Members as well as Revenue Members of the Land Grabbing Special Court which is constituted under the said Act.

2. It is stated on behalf of the petitioners that first the Ordinance and later the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short "the Act") which has received the assent of the President of India on 14-9-1982, was enforced with effect from 29-6-1982, with a view to prohibiting the ctivity of land grabbing in the State of Andhra Pradesh. The statement of objects and reasons gives a glimpse of the cause for the enforcement by the Legislature of the State and the purpose for which it is enacted. It recites as follows :

"It has come to the notice of the Government that there are organized attempts

on the part of certain lawless persons operating individually and in groups to grab either by force, or by deceit or otherwise lands belonging to the Government, a local authority, a religious or charitable institution or endowment, including wakf or any other private person. The land grabbers are forming bogus co-operative housing societies or setting up fictitious claims and including in large scale and unprecedented and fraudulent sale of land through unscrupulous real estate dealers or otherwise in favour of certain section of people, resulting in large scale accumulation of the unaccounted wealth. As public order is also adversely affected thereby now and then by such unlawful activities of land grabbers in the State, particularly in respect of urban and urbanisable lands, it was felt necessary to arrest and curb such unlawful activities immediately by enacting a special law in that regard.....

Whereas there are organised attempts on the part of certain lawless persons operating individually and in groups, to grab, either by force or by deceit or otherwise, lands (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private persons) who are known as "land grabbers".

And whereas such land grabbers are forming bogus co-operative housing societies or setting up fictitious claims and indulging in large scale and unprecedented and fraudulent sales of lands belonging to the Government, local authority, religious or charitable institutions or endowments including a wakf or private persons, through unscrupulous Real Estate dealers or otherwise in favour of certain sections of the people resulting in large accumulation of unaccounted wealth and quick money to land grabbers;

And whereas, having regard to the resources and influence of the persons by whom, the large scale on which and the manner in which, the unlawful activity of land grabbing was, has been or is being organised and carried on in violation of law by them, as land grabbers in the State of Andhra Pradesh and particularly in its urban areas, it is necessary to arrest and curb immediately such unlawful activity of land grabbing;

And whereas public order is adversely affected by such unlawful activity of land grabbers :"

3. The Act has defined "land" to include 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" to mean a person or a group of persons who commit land grabbing and to include 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 to include the successors-in-interest; "land grabbing" to mean every activity of grabbing of any land, whether belonging to

the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person, by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into 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; and the term "to grab land" shall be construed accordingly. By Section 3, the Act has declared land grabbing in any form unlawful and any activity connected with or arising out of land grabbing as an offence punishable under the Act. Section 4 provides that (1) no person shall commit or cause to be committed land grabbing; (2) any person who, on or after the commencement of the Act, continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment including a wakf, or other private person, shall be guilty of an offence under the Act; and (3) whoever contravenes the provisions of Sub-section (1) or Sub-section (2) shall on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend to five years, and with fine which may extend to five thousand rupees. Section 5 deals with other offences and Section 6 with offences by Companies, Section 7 with the constitution of Special Courts and Section 7-A with the constitution of Special Tribunals and its powers etc. Section 8 provides the procedure and powers of the Special Courts and Section 9 states that the Special Court shall have the powers of the Civil Court and the Court of Sessions. Besides other relevant provisions, Section 15 of the Act states that the provisions of the Act shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a Court or any other Tribunal or authority, and Section 16 provides for rule making power of the Government of the State for carrying out all or any of the purposes of the Act.

4. Although, generally, some statements are made as to the validity of the Act, main attack of the petitioners is on the provisions contained in Section 7 of the Act which deal with the constitution of Special Court and appointment of Chairman, Judicial Members and Revenue Members. Before we proceed to take notice of the contentions, we propose to extract Section 7, which, after receiving quite a few amendments, has made provisions for the appointment of the Chairman and Members of the Special Court to enquire into any alleged act of land grabbing, and trial of cases in respect of the ownership and title to, or lawful possession of, the land grabbed. It reads as follows :

"7. Constitution of Special Courts:-

(1) The Government may, for the purpose of providing speedy enquiry into any alleged act of land grabbing, and trial of cases in respect of the ownership and title to, or lawful possession of, the land grabbed, by notification, constitute a

Special Court.

(2) A Special Court shall consist of a Chairman and four other members, to be appointed by the Government.

(3) The Chairman shall be a person who is or has been judge of a High Court and of the other four members, two shall be persons who are or have been District Judges (hereinafter referred to as Judicial Members) and the other two members shall be persons who hold or have held a post not below the rank of a District Collector (hereinafter referred to as Revenue Members).

Provided that the appointment of a person who was a Judge of a High Court as the Chairman of the Special Court shall be made after consultation with the Chief Justice of the High Court concerned.

Provided further that where a sitting Judge of a High Court is to be appointed as Chairman, such appointment shall be made after nomination by the Chief Justice of the High Court concerned, with the concurrence of the Chief Justice of India.

(4) The Government from time to time likewise reconstitute the Special Court constituted under Sub-section (1) or may, at any time abolish such Special Court.

(4-A) The Chairman or other member shall hold office as such for a term of two years from the date on which he enters upon his office, or until the Special Court is reconstituted or abolished under Sub-section (4), whichever is earlier.

(4-B) (a) Subject to the other provisions of this Act, the jurisdiction, powers and authority of the Special Court may be exercised by benches thereof one comprising the Chairman, a Judicial Member and a Revenue Member and the other comprising of a Judicial Member and a Revenue Member.

(b) Where the bench comprises of the Chairman, he shall be the Presiding Officer of such a bench and where the bench consists of two members, the Judicial Member shall be the Presiding Officer;

(c) It shall be competent for the Chairman either suo motu or on a reference made to him withdraw any case pending before the bench comprising of two members and dispose of the same or to transfer any case from one bench to another bench in the interest of justice;

(d) Where it is reasonably apprehended that the trial of civil liability of a person accused of an offence under this Act, is likely to take considerable time, it shall be competent for the Chairman to entrust the trial of the criminal liability of such offender to another bench in the interest of speedy disposal of the case;

(e) Where a case under this Act is heard by a bench consisting of two members and the members thereof are divided in opinion, the case with their opinion shall be laid before another judicial member or the Chairman and that member or Chairman, as the case may be after such hearing as he thinks fit, shall deliver his opinion and the decision or order shall follow that opinion;

(5) The quorum to constitute a meeting of any bench of the Special Court shall be two;

(5-A) The Special Court may, by notification, make regulations not inconsistent with the provisions of this Act or the rules made thereunder relating to the procedure to be followed for the conduct of the cases and for regulating the manner of taking decisions;

(5-B) The Special Court may cause a public notice of the substance of such regulations for the information of the general public;

(5-C) Every regulation made under this section shall, immediately after it is made, be laid before the Legislative Assembly of the State if it is in session, and if it is not in session in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modifications in the regulation or in the annulment of the regulation, the regulation shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation ;

(5-D) (i) Notwithstanding anything in the Code of Civil Procedure, 1908, the Special Court may follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play and subject to the other provisions of this Act and of any rules made thereunder while deciding the civil liability;

(ii) Notwithstanding anything contained in Section 260 or Section 262 of the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be tried in a summary way and the provisions of Sections 263 - 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial;

(iii) When a person is convicted of an offence of land grabbing attended by criminal force or show of force or by criminal intimidation, and it appears to the Special Court that by such force or show of force or intimidation the land of any person has been grabbed, the Special Court may if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, and other person who may be in possession of the property.

(6) No act or proceeding of the Special Court shall be deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution or re-constitution thereof; "

5. Sub-section (2) above states that the Government shall appoint the Chairman and Members of a Special Court. Sub-section (3) states that the Chairman shall be a person who is or has been Judge of a High Court and of the other four members, two shall be persons who are or have been District Judges (Judicial

Members) and the other two shall be persons who hold or have held a post not below the rank of a District Collector (Revenue Members). The first proviso to Sub-section (3) says that the appointment of a person who was a Judge of a High Court as the Chairman of the Special Court shall be made after consultation with the Chief Justice of the High Court concerned and the second proviso says that where a sitting Judge of a High Court is to be appointed as Chairman, such appointment shall be made after nomination by the Chief Justice of the High Court concerned, with the concurrence of the Chief Justice of India. It is noticeable that in the case of a person who was a Judge of a High Court, for appointment as the Chairman of the Special Court, prior consultation with the Chief Justice of the High Court, and in the case of a sitting Judge of a High Court, for such appointment, nomination by the Chief Justice of the High Court with the concurrence of the Chief Justice of India, is necessary, but in the case of appointment of Judicial Members or Revenue Members there is no such requirement. The Government has, thus, been left with complete freedom to select and appoint as Judicial Members persons who are or have been District Judges and Revenue Members who are or have been holding a post not below the rank of a District Collector. Petitioners have alleged that the Andhra Pradesh Civil Courts Act, 1972, which deals with establishment and constitution of Courts for the District of Hyderabad and Districts other than Hyderabad provide that Courts can be established by the Government after consultation with the High Court and jurisdiction can be conferred on the District Courts, Subordinate Courts and District Munsif Courts by the Government after consultation with the High Court. The Civil Courts established under Act 19 of 1972 had been exercising jurisdiction in the trial of suits in respect of ownership and title to or lawful possession of the land which has been taken away and conferred on the Special Courts and Special Tribunals constituted under the Land Grabbing (Prohibition) Act. Therefore, it is irresistible to presume that by constituting the Special Court and Special Tribunals under the Land Grabbing (Prohibition) Act, the Government has made inroads into the independence of the judiciary which has been entrusted with the sacred duty of adjudicating disputes between citizens and between citizens and the State. According to the petitioners, the constitution of a Special Court and Special Tribunals under the Act is a negation of principles of independence of judiciary.

6. We are assisted in the instant case at the Bar by the learned Counsel for the petitioners and learned Advocate-General on behalf of the State. We have been taken through various aspects of the matter and are informed about the need to establish a Special Court to deal with the cases of land grabbing on the one hand and consequences of such selection of persons to constitute the Special Court by the Government of the State on the other hand.

7. There are many words of caution by the Courts in respect of legislations which intend to or appear to affect the hierarchy and control of the Courts which are created in exercise of the ordinary law making power of either the Legislature of the State or the Parliament. List- 1 of Seventh Schedule contains as Item 77 -

Constitution, Organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court) and the fees taken therein, persons entitled to practice before the Supreme Court; as Item 78 - Constitution and organisation (including vacations) of the High Courts except provisions as to Officers and servants of the High Courts, persons entitled to practise before the High Courts and as Item 79 - Extension of jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union Territory - as the subjects, in respect of which, the Parliament is competent to make laws. List-I in the Seventh Schedule contains as Item 3 - Officers and servants of the High Court, procedure in rent and revenue Courts, fees taken in all Courts except the Supreme Court; as item 65 - jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in the list and as Item 66 - fees in respect of any of the matters in the list, but not including fees taken in any Court - as the subjects in respect of which the 6. State Legislature is competent to make laws. The concurrent List - III in the Seventh Schedule contains as subjects, in respect of which, in the circumstances, as envisaged under the Constitution, the Parliament as well as the State Legislature are competent to make laws-Criminal Law, Criminal Procedure etc., as items 1 to 3 Administration of Justice, constitution and organisation of all Courts, except the Supreme Court and the High Courts as item 11-A, Evidence, Civil Procedure, Contempt of Court etc, but not including contempt of the Supreme Court as items 12 to 14 and as Item 46- Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in the list. Since Civil Procedure is included as one of the subjects in List-II and administration of Justice, constitution and organisation of all Courts, except the Supreme Court and the High Courts and jurisdiction and powers of all Courts, except the Supreme Court, with respect to all the matters in the concurrent list are included as subjects, in respect of which, both the Union and the States are competent to make laws, it is possible, in given circumstances,, to see that while deciding to constitute the Special Courts, the State Legislature has enacted the A.P. Land Grabbing (Prohibition) Act on a subject, with respect to which, it has the power to enact under List-III and since jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in List-II is a subject, in respect of which, the State Legislature is competent to legislate, it will be pertinent to examine, whether the A.P. Land Grabbing (Prohibition) Act, 1982 (is) in respect of one of the subjects in List-II of the Seventh Schedule.

8. Constitution 42nd Amendment Act, 1976 has introduced Article 323-B which states the appropriate Legislature may, by law, provide for the adjudication or trial by Tribunals of any disputes, complaints or offences with respect to all or any of the matters specified in Clause (2) with respect to which such Legislature has power to make laws, with regard to land reforms by way of acquisition by the State of any estate as defined in Article 31-A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way, ceiling on urban property and to exclude

the jurisdiction of all Courts, except the jurisdiction of the Supreme Court under Article 136, with respect to all or any of the matters falling within the jurisdiction of the said Tribunals. It will be pertinent to examine, whether the Special Courts under the Land Grabbing (Prohibition) Act are Tribunals in respect of such a subject that is taken care of by Article 323-B by the Constitution. Although there is no such mention as one finds in respect of the remedies for enforcement of rights conferred by Part-III of the Constitution before the Supreme Court as prescribed under Article 32 of the Constitution of India or the power to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, or any of them, for the enforcement of any of the rights conferred by part III of the Constitution or for any other purpose conferred upon the High Courts under Article 226 thereof, Constitution has envisaged subordinate Courts as Courts of District Judges and the Judicial Service of the States under Articles 233 - 235. There are quite a few provisions in the Constitution which create exclusive jurisdiction, such as one in Article 131 of the Constitution, which specifies that Supreme Court alone shall have the original jurisdiction in any dispute between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States if and in so far as the dispute involves any question, whether of law or fact, on which the existence or extent of a legal right depends to the exclusion of any other Court or Article 262 which gives to the Parliament power to provide by law for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley and also to provide by law that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of these matters. In short, and in effect, the Constitution which has promised Justice, social, economic and political in its preamble has carved out the exclusive domain of the Courts for resolving disputes and for the administration of justice and has accepted as one of the basic features the right of any citizen of India to seek adjudication of any dispute, controversy or difference with respect to his rights under the laws and such rights which are basic and fundamental under the Constitution and other rights which constitution recognises, such as, right to property under Article 300-A. Indeed, pre-independent India which received limited benefits of colonial legislations and the laws made by the British Parliament for its subjects in India, after the people constituted themselves into a Sovereign Socialist Secular Democratic Republic received the cherished dreams and the promise that, save in accordance with procedure established by law, any violations of the rights and privileges which are protected by the laws and/ or by the Constitution itself, if denied or threatened, would be adjudicated by the Courts, and in matters of administration of justice, Courts shall be free from any legislative or executive feat. The mix-up, which the system had nurtured until the establishment of the Republic under the constitution, of the Executive and the Courts has been substantially cleared and, Article 50 in Part IV of the

Constitution, as one of the directives, says that the State shall take steps to separate the executive from the judiciary in the Public Services of the State.

9. In *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, , one of the Judges of the Supreme Court, in a separate Judgment has stated:

"I am of the view that if there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review and it is questionably, to my mind, part of the basic structure of the Constitution. Of course, when I say this, I should not be taken to suggest that effective alternative institutional mechanisms or arrangements for judicial review cannot be made by Parliament. But, what I wish to emphasise is that judicial review is a vital principle of our Constitution and it cannot be abrogated without affecting the basic structure of the Constitution. If by a constitutional amendment, the power of judicial review is taken away and it is provided that the validity of any law made by the Legislature shall not be liable to be called in question on any ground, even if it is outside the legislative competence of the Legislature, or is violative of any fundamental rights, it would be nothing short of subversion of the Constitution, for it would make a mockery of the distribution of legislative powers between the Union and the States and render the fundamental rights meaningless and futile."

10. The above has been reiterated, indeed, in so many ways, yet, always concurring that the basic and essential feature of judicial review cannot be dispensed with, even by the Parliament by way of amendment of the Constitution. The characteristic attribute of a judicial act or decision is that it binds, whether it be right or wrong, and thus speaking, it is trite that any abrogation of the powers which the Courts exercise, without any valid reason, and transfer of such subjects of trial in the Courts as envisaged by a law, to persons or authorities, even given the specious nomenclature of Special Court, without such person or authority or Special Court or Tribunal being provided with the personnel and means to administer justice of quality independence and standard, would be violative of the basic structure of the Constitution of India.

11. We have taken note of the State's competence to make laws for establishment of Courts as envisaged in the Concurrent List-III and the State List-II. The Government of the State has enacted the Andhra Pradesh Civil Courts Act, 1972, which defines "Court" to mean a Civil Court established or deemed to be established under the said Act and has provided therein that the Government may, after consultation with the High Court, by notification, establish a Court to be called the City Civil Court with jurisdiction to receive, try and dispose of subject to the provisions of the Act, all suits and proceedings of a civil nature arising in the District of Hyderabad and for other Districts of the State called District Courts, and for all the Districts, Courts of District/ Additional District Judges, Subordinate Judges and District Munsifs. It has also enacted Small Causes Courts Act/Acts with similar provisions. There are several other laws providing for establishment of Courts in consultation with the High Court and

appointments to such Courts of the Officers from the Judicial Service of the State, or if from outside of the Judicial Service, only in consultation with the High Court and/or the Chief Justice of the High Court. Substantially, all these are done within, of course, the legislative competence of the State Legislature so as not to transgress the limitations put upon the establishment of the Courts, appointments of District Judges and 10. recruitment of persons other than District Judges to the Judicial Service. All such establishment of Courts and appointment of Presiding Officers must be agreeable to the constitutional mandate under Article 214 of the Constitution that there shall be a High Court for each State and other provisions in Chapter V of the Constitution of India about the High Court to be a Court of record, constitution of High Courts, appointment and conditions of the office of a Judge of a High Court and the powers and jurisdiction of the High Court, including provisions in Chapter VI, wherein appointment of District Judges is made permissible only in consultation with the High Court exercising jurisdiction in relation to such State or on the recommendation of the High Court, as the case may be, of a person directly recruited or appointed having not less than seven years of practice as an Advocate or a pleader at the bar and recruitment of persons other than District Judges to the Judicial Service, in accordance with the rules made by the Governor of the State, in that behalf, after consultation with the State Public Service Commission and with the High Court exercising Jurisdiction in relation to such State. Article 235 says " The control over District Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the Judicial Service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law". It is primary that the High Courts are established by the Constitution of India and the District Courts and Subordinate Courts by the Act of the Parliament or under the Act of the Legislature of the State, in consultation with the High Court and all District Judges and Subordinate Judicial Officers are appointed, either in consultation with the High Court or on the recommendation of the High Court, in the case of District Judges and in the case of other categories, under the Act or the Rules framed in this behalf, in consultation with the High Court. Constitution has not conceded to the State Legislature the power to establish a Court which is equal in status of the High Court and in the case of creation of Courts other than the High Court in the State, has limited the discretion of the law makers in the State as well as the executive Government, to do so, in consultation with the High Court. The above, however, does not mean that adjudicatory mechanism, other than Courts which are subordinate to the High Court for the purposes of Article 227 of the Constitution, cannot be created by the Act of the Legislature of the State, or that such matters which hitherto are decided by the Courts subordinate to the High Court, cannot be entrusted to such authorities, Tribunals

or persons who are vested with such powers, as are assigned to them, by the law of the State, and who are selected in accordance with law, for holding such posts. Such power of the State, however, must, always be subject to the limitation indicated above, that anything done to erode the justice system prevailing in the State and in the country by denuding Courts of their power is not permissible. Any parallel mechanism/ to the High Court or a Court subordinate to it can be created in so far as ordinary jurisdiction is concerned. Superior Court's jurisdiction under Article 32 or 226 of the Constitution of India stand on a different footing. But, the personnel to man such alternative forums cannot just be brought from nowhere. They shall have to be selected only in consultation with the High Court or the Supreme Court as the case may be and from amongst such persons who are capable of deciding cases and has the qualities of a judge selected for such purpose.

12. Two articles in the Constitution of India which are introduced by 42nd Amendment Act, 1976, and whose validity have since been tested by a Full Bench of this Court in W.P.Nos. 518 of 1993 and batch dated 26-10-93 Sakinala Hari Nath and Others Vs. State of Andhra Pradesh and Others, and by the Constitution Bench of the Supreme Court in Civil Appeal No. 169 of 1994 and batch dated 20-3-1997, namely, Article 323-A and Article 323-B do not appear to us relevant for dealing with the position which the Land Grabbing (Prohibition) Court occupies under the impugned Act. The two give either to the Parliament or the appropriate Legislature, as the case may be, power to provide for the adjudication or trial by Administrative Tribunals or by Tribunals - of any disputes, complaints, etc. with respect to recruitment and conditions of services of persons appointed to the public services and posts etc.(under Article 323-A) and of any disputes, complaints or offences with respect to all or for any of the purposes specified under Article 323-B. They do not suggest of establishment of a Court other than the Courts as are envisaged under Chapters V and VI of the Constitution of India. As held by this Court in the above judgment and the Supreme Court in the case cited above, appointments of Presiding Officers of such Tribunals have to be made by the process of consultation with the Chief Justice of the High Court and the Chief Justice of India and for judicial review, they do remain subordinate to the High Courts of the States as any judgments/ orders by them are amenable to the High Court's jurisdiction under Article 226 of the Constitution.

13. The Special Court under the Land Grabbing (Prohibition) Act is indubitably a Court discharging judicial functions, almost the same functions as the Civil Court discharges for trial of cases involving the determination of question of title and ownership or lawful possession. It has also the power to pass interim orders like a Civil Court. Personnel, however who are to be appointed to preside over the Special Court i.e., Chairman and four other members are shown as the Chairman who is or who has been a Judge of a High Court, two Judicial Members who are or have been District Judges and two Revenue Members who held or have held a post not below the rank of a District Collector. When a sitting Judge of the High

Court is appointed as the Chairman of the Special Court, the provisos aforementioned of Section 7 say, shall be appointed after nomination of the Chief Justice of the High Court concerned with the concurrence of the Chief Justice of India and if it is a retired Judge of the High Court, after consultation with the Chief Justice of the High Court concerned. A High Court Judge, sitting or retired, cannot be appointed as the Chairman of the Special Court unless he is nominated by the Chief Justice of the High Court or whose nomination is approved by the Chief Justice of the High Court. Although the Land Grabbing (Prohibition) Act has made no specific mention, since Article 235 of the Constitution of India vests the control of subordinate judiciary in the High Court, a District Judge working in the Higher Judicial Service of the State cannot be taken as the Judicial Member of the Tribunal unless the Government seeks permission of the High Court to relieve him from the work as the District Judge. Can then the Government in the case of a person who has retired as the District Judge just pick up any and put him or her as the Judicial Member? In the case of Revenue Members, whether he is still in the service holding a post not below the rank of District Collector or he is retired from service, there is no consultation either contemplated for judging whether he has such capabilities as any person presiding over a Court shall have. Section 7 of the Land Grabbing Act, in such parts, has given to the Government of the State powers, which appear to nullify the effect of Article 233 of the Constitution of India, in the case of Judicial Members as well as in the case of Revenue Members who, undoubtedly, are brought to work in the Special Court in lieu of a District Judge or a Subordinate Judge because work hitherto exclusively done by the Courts in terms of the provisions of the Act are assigned to the Land Grabbing (Prohibition) Court. In *S.P. Sampath Kumar v. Union of India* AIR 1987 SC 386, speaking with respect to the constitution of Administrative Tribunals, the Supreme Court has said:

"It is necessary to bear in mind that service matters which are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and entrusted to the Administrative Tribunal set up under the impugned Act for adjudication involve questions of interpretation and applicability of Articles 14, 15, 16 and 311 in quite a large number of cases. These questions require for their determination not only judicial approach but also knowledge and expertise in this particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have some modicum of legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained Judges in the High Courts and the Supreme Court. . . ."

14. The Supreme Court has since held that the powers under Articles 226 and 227 of the Constitution cannot be entrusted to the Administrative Tribunals and, if they adjudicate in exercise of such plenary power, they do so, as the Court of the first instance, and any orders passed by them are subject to judicial review by the High Court under Article 226 of the Constitution. Yet, the reasoning, which is quite applicable to the facts of the instant case, cannot be ignored and least, it

can be said, is that unless judicially trained independent persons of proven integrity are appointed to adjudicate such questions, one may get a feeling that there is an attempt to create not a parallel and independent mechanism for the purposes which are sought to be fulfilled and for the objects which are sought to be achieved, but for unknown reasons, normal adjudicatory mechanism of the Courts are trammelled and litigants are forced to go to a so-called Special Court where they may not get justice. It will be difficult to remove from the minds of the litigant public that legal standards and standards of justice are diluted and they are forced to get their matters adjudicated by persons who do not substantially conform to the standard of a Judge in a regular Court of law. A Bench of the Madras High Court in *V. Balachandran v. Union of India and Anr.* (1993) 76 Comp. Cases 67, of which, one of us was a Member, had the occasion to deal with the constitution of the Company Law Board under the rules made in this behalf and the Court dealt with provisions which were similar to the provisions in respect of appointment of Judicial Members and Revenue Members u/s 7 of the Land Grabbing (Prohibition) Act. The Court has referred to the Report of the Inquiry by Sir Oliver Franks, who was commissioned by the Lord Chancellor in 1955 and which report is quoted in some detail in the book *Administrative Law* by Dr. William Wade, 5th edition. The quotable passages are:

"The Committee had to make a fundamental choice between two conflicting attitudes, the legal and the administrative. The legal attitude was that Tribunals must be regarded as part of the machinery of justice and organised accordingly. The administrative attitude was that Tribunals were primarily part of the machinery of administration. The head of the Lord Chancellor's Department and the Treasury Solicitor, being both lawyers and administrators, were able to appreciate both view points, but other Government Departments strongly pressed the "Administrative view". Witnesses from the Universities put forward suggestions for a permanent body of some kind to concern itself with Tribunal procedure, to supervise the making of procedural rules, and to make sure that the elements of legal justice were observed throughout the whole system with as much uniformity as was practicable."

15. Acknowledging the undoubted need for Tribunals as a supplementary system of judicature, the Committee reported:

"Much of the official evidence, including that of the Joint Permanent Secretary to the Treasury appeared to reflect the view that the Tribunals should properly be regarded as part of the machinery of administration, for which the Government must retain a close and continuing responsibility. Thus, for example, Tribunals in the social service field would be regarded as adjuncts to the administration of the services themselves. We do not accept this view. We consider that Tribunals should properly be regarded as machinery provided by Parliament for adjudication rather than as part of the machinery of administration. The essential point is that in all these cases Parliament has deliberately provided for a decision independent of the Department concerned and the intention of Parliament to

provide for the independence of Tribunals is clear and unmistakable."

"To make Tribunals conform to the standard which Parliament thus had in mind, three fundamental objectives were proclaimed; (1) openness; (2) fairness and (3) impartiality."

16. There are quite a few other informations in the above cited Judgment of the Madras High Court and coming to the types of persons who are sought to be selected to constitute the Company Law Board, the Court has commented:

"A reference to the provisions in Section 10-A introduced in the Companies Act, 1956 by the Amendment Act 53 of 1963, will show that when it had been envisaged that a Tribunal would be constituted to exercise the powers and functions conferred on the Court by or u/s 155, Section 203 in so far as it relates to the granting of leave under that section, and Sections 240 and 397 - 407 of the Companies Act, it was provided that the members of the Tribunal shall be persons who had in the opinion of the Central Government adequate knowledge of, and experience in, (a) law, or (b) matters of accountancy, or (c) administration or management of companies and law relating thereto but the Chairman would be one who had been a judge of a High Court or was qualified for appointment as Judge of a High Court and no other person. When the very same powers are going to be conferred upon the Company Law Board, it is said under the impugned rules, that the Chairman, to be appointed, shall be a person who is eligible to be appointed as an Additional Secretary to the Government of India; or who has atleast for three years held office of the member, the second part having some semblance of experience at least for a period of three years in dealing with the matters hitherto dealt with by the Courts of such matters falling Under Sections 155, 203, 240 and 397 - 407 of the Company Law but not enough to inspire confidence like a person who had been a Judge of a High Court or a person who is qualified for appointment as Judge of a High Court and the first i.e., a person who is eligible to be appointed as an Additional Secretary to the Government of India without having any working experience even of the kind the other category personnel may acquire."

17. A Full Bench of the Patna High Court in Kalika Kuar alias Kalika Singh v. State of Bihar of which one of us was a member, had the occasion to deal with the transfer of jurisdiction of the Civil Courts to the Land Consolidation Courts/ authorities, created for the purposes of consolidation of land holdings, like the jurisdiction created for the Land Grabbing (Prohibition) Court, to decide the disputes as to title. The Consolidation Courts/authorities were given the power to decide the questions of title including the suits for partition. The Court, after the review of the various aspects of the matter, observed that amongst the possessions that people cherish is title to hold land and disputes as to who the owner of the land are always full of intricate issues of facts and law, they cannot easily be digested in a summary procedure and they cannot easily be dealt with by persons who do not have the discipline of law in this behalf. The Patna High Court has also laid down that issue of right and interest in a land is one which is

better left to be decided by the Civil Courts than given to any other authority as a judicially trained mind alone would be able to decipher such legal evidence which would decide on such crucial issues. It accordingly pointed out that the law which provided for the adjudication, in respect of title, by the revenue authorities, as conclusive proof of title, was only a provision as to the rule of evidence of conclusive proof and not as finality to the adjudication in respect of title. In the instant case, as we have seen already, safeguards in the selection of the personnel for being Judicial Members and Revenue Members of the Land Grabbing (Prohibition) Court are quite deficient. It will be always necessary to remember that, by stepping out of the procedure for the appointment of the District Judges and other Judicial Officers under the Constitution of India - Articles 233 and 234 - when a person to preside over a Court, whether it is a Special Court or a Court in the hierarchy of the Courts in the State, departure is made and while making such departure, if intention is to provide a better and superior expertise to the Presiding Officers of the Land Grabbing (Prohibition) Court, to decide the intricate issues of title to land etc., the State cannot afford to make the selection less rigorous than the selection of a District Judge. Indeed, if a departure is shown in the appointment of the Chairman, who can be no one other than a sitting Judge of the High Court or a retired Judge of the High Court and no consultation with the Chief Justice of the High Court is required for the appointment of the Chairman, it would still be defective, as indicated by us above. The appointment of Judicial members and Revenue Members without consultation with the Chief Justice of the High Court also cannot be proper and valid. Section 16 of the Act gives to the State Government power to make rules for carrying out all or any of the purposes of the Act. Since the Act has stipulated, as one of its purposes, creation of a Special Court, and personnel to preside over the Court being selected from amongst the Judicial Officers not below the rank of a District Judge and Revenue Members not below the rank of a District Collector, it is irresistible to hold that the purpose envisaged for the creation of the land Grabbing (Prohibition) Special Court is to provide a more effective and efficacious mechanism than that of the District Court of ordinary jurisdiction and for that purpose, selection has to be made of persons to preside over the Special Court, in the manner, which is, if not superior, almost equal to the selection of a District Judge. Absence of clear provisions, like the consultation with the Chief Justice of the High Court as in the case of appointment of a retired Judge of the High Court as the Chairman of the Special Court, for the selection of the Judicial Members and Revenue Members of the Special Court, is such which have to be taken care of by amendment of the Act in this regard or while framing the rules, the Government of the State could take notice of the above purpose and provide for consultation and further procedure for selection of the Judicial Members and Revenue Members of the Special Court. Rules, however, are totally silent and, it seems, the omission has not been bothering any person until the present proceedings before the Court. We are constrained to hold, for the reasons aforementioned, that there is a serious infirmity in the procedure for selection of the Judicial Members and Revenue Members inasmuch as no

provision has been made for consultation with the Chief Justice of the High Court in selecting a Judicial Member or a Revenue Member of the Special Court. Absence of specific provisions, in respect of such consultation in the Act, would be enough to declare Sub-section (3) of Section 7 of the Act ultra vires in so far as it provides for the appointment of the two Judicial Members and the two Revenue Members of the Special Court to deal with the cases of land grabbing except however, that the defect can be cured by framing rules. Even in the rules framed, there is deficiency and unless that is taken care of by framing rules to the said effect, selections of the Judicial Members and the Revenue Members of the Special Court, in the absence of consultation with the Chief Justice, may, and in the absence of any provision in this behalf, would be unconstitutional and illegal. It is evidently a selection which has the effect of destroying the very independence of judiciary by packing the land Grabbing (Prohibition) Court with persons who are selected by the executive Government. We do not, for a moment, entertain the idea that while making such selections, executive Government is invariably guided by irrelevant considerations. Governments do have concern and they are expected to know that only a right person is selected and work is entrusted to a right person only so that the confidence of the public is maintained. As held by the Supreme Court in the case cited above and by the Bench of the Madras High Court in V. Baladwndran's case (3 supra), of which one of us was a member, it is such freak selections which sometimes, sneak into even honest places. . . . which destroy the credibility and leave scope for serious doubts about the intentions of the Government. Such arbitrariness is better avoided than left to Court and it is, indeed, necessary, that proper reminders are issued by us to all concerned to desist from making any appointments without consulting the Chief Justice of the High Court who represents the conscience of the Court and, incase, any such appointments are existing, to make them valid by such consultation. In Balachandran's case (3 supra), the Madras High Court declared the rules framed by the Union Government ultra vires and although found appointments already made under the invalid rules bad in law, observed:

"Those who have been selected and appointed to their respective offices, responded to the call through the advertisements issued by the second respondent. The Chairman and two members in any case were in the previous Board and they have been continued in their respective posts, for the reason of a provision in this behalf in the impugned rules. For the reason of the view that we have taken, we would have declared the constitution of the Board invalid but, if we do so, we shall bring in the life of a Board already constituted, a premature end. Even that would not have bothered us much had we not noticed that those who have been appointed as members of the Board are not at fault. They have been selected and appointed in accordance with the existing rules."

18. More than the case of V. Balachandran (3 supra), in the case before us, there has been contentious situation of existence of the Special Court for more than a decade and several persons having been appointed as Judicial Members and Revenue Members under the existing provisions, including the present

incumbents. There are some arguments before us and statements, unlike one before the Madras High Court in Balachandran's case (3 supra), where no party contended as to the ability, integrity an/or suitability of the persons appointed as members of the company Law Board, that some persons who are present incumbents of the Land Grabbing (Prohibition) Court, could, in the event of a more careful selection, would have been found lacking either in ability or in suitability. We have given our anxious consideration how to balance between what has existed for more than a decade and what must, under the scheme of the Constitution of India, be the constitution of the Special Court and who be the persons selected and appointed as Judicial Members and Revenue Members of the Court. In our considered view, it would be proper if, in the case of existing Judicial Members and Revenue Members, Respondent - State of Andhra Pradesh is directed to hold ex post facto consultation and, in the case of any future appointments, no selection is made of a Judicial Member or a Revenue Member, without consulting the Chief Justice of the High Court. The Government of the State shall be well advised to provide in the rules, specifically in this behalf. Even in the absence of the rules, since the executive power of the State is co-extensive with the legislative power and the above is a rule flowing from the very scheme under the Constitution of India, for creation of a Court and for selection and appointment of the Presiding Officers of the Court, direction to the said effect has to be carried out. It will be quite in order, thus, to issue the directions as follows:

- (1) The Respondent - State of Andhra Pradesh represented by its Chief Secretary to Government, shall convey to the Registrar of the High Court all materials pertaining to the qualifications and ability/ suitability etc., of the incumbents - Judicial Members and Revenue Members - of the Special Court constituted u/s 7 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, forthwith;
- (2) The Registrar of the Court on receipt of the above shall place all materials before the Chief Justice for his response and convey the orders of the Chief Justice in this behalf to the Chief Secretary to Government;
- (3) Respondent - State of Andhra Pradesh is restrained from making any appointments of Judicial members and Revenue Members without the consultation in respect of the selection of such Member/Members with the Chief Justice of the High Court; and
- (4) The Respondent - State of Andhra Pradesh shall decide whether any incumbent Judicial Member/Revenue Member shall continue after receiving the opinion in this behalf of the Chief Justice of the Court and such incumbent - respondent shall cease to function in case opinion adverse to his continuance is conveyed to him.

In the result, the Writ Petitions are accordingly ordered.