

**(2009) 03 AP CK 0049**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 1839 of 2009**

Ketha Sujathamma Reddy and Others

APPELLANT

Vs

B. Rammurthy and Others

RESPONDENT

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**Date of Decision : 13-03-2009**

**Acts Referred:**

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 10  
Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 — Rule 27(1), 6  
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1, Order 41 Rule 23, Order 41 Rule 23A, Order 41 Rule 25, Order 41 Rule 31  
Evidence Act, 1872 — Section 4

**Citation :** (2009) 3 ALD 804 : (2009) 3 ALT 747 : (2009) 2 APLJ 14

**Hon'ble Judges :** Vilas V. Afzulpurkar, J;V. Eswaraiyah, J

**Bench :** Division Bench

**Advocate :** O. Manohar Reddy, for the Appellant; Kollu Rajashekar, for Respondents 1 to 3, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Vilas v. Afzulpurkar, J.—Respondent Nos. 3, 5, 6 and 7 in LGOP. No. 4 of 1996 before the Special Tribunal under Andhra Pradesh Land Grabbing (Prohibition) Act, (Principal District Judge), Nellore are the petitioners herein. A Writ of Certiorari is sought for against the orders passed by the Special Tribunal as above in LGOP. No. 4 of 1996 dated 01.08.2007 as confirmed by the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, Hyderabad in LGA. No. 21 of 2007 dated 04.11.2008.

2. The brief facts of the case are as follows:

Respondents 1 to 3 herein filed LGOP. No. 4 of 1996 under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short "the Act") for recovery of schedule property, which is Plot No. 213 at Bhaktavatsala Nagar, admeasuring an extent of 33-1/3 ankanams of vacant site in Sy. Nos. 440, 441, 431, 438 and 439. The aforesaid land grabbing case was filed on the allegations that originally

the petition schedule property was allotted to the father of the respondents 1 and 2 herein and husband of the third respondent by name Bhashyam Narayanaiah on 11.08.1980, by the Government on usual market value and that the possession was delivered and he constructed a thatched house. Afterwards, the said Narayanaiah fell ill and was shifted for treatment to some other village and during the non-occupation of the said house by him and the respondents 1 to 3, the petitioners herein forcibly occupied the said house by demolishing the same and constructed a new house and as such, are land grabbers. The petitioners herein filed a counter denying any grant of patta to Narayanaiah and also denying his possession. In turn, the petitioners claimed that the father of the first petitioner herein was granted patta by the Tahsildar, Nellore and the revenue authorities put them in possession and as such they claimed that they are not land grabbers and are occupying the property of their own.

3. The Special Tribunal, after following the procedure prescribed under the Act, has taken cognizance of the land grabbing case and after noticing the rival pleadings framed the following issues for consideration:

1. Whether the petitioners are entitled for delivery of vacant possession of the schedule mentioned site?

2. Whether the respondents have grabbed the petition schedule mentioned site?

3. Whether the petitioners are entitled to Rs. 50,000/- as damages for wrongful possession of schedule mentioned site?

4. To what relief?

4. During the trial, on behalf of the respondents 1 to 3 herein P.Ws.1 to 3 were examined and marked Exs.A1 to A7 and Exs.X1 and X2. However, on behalf of the petitioners herein no evidence was adduced. On consideration of the evidence on record, the special tribunal allowed the land grabbing case holding that the petitioners herein are land grabbers and directed that the possession of the petition schedule property be delivered to the respondents 1 to 3 herein within three months and damages of Rs. 10,000/- with interest at 9% per annum and costs were also awarded.

5. Questioning the said order, the petitioners herein preferred an appeal in LGA. No. 21 of 2007. Under the impugned order dated 04.11.208 the Special Court has dismissed the said appeal affirming the order of the Special Tribunal. Present writ petition is directed against the said orders and it is contended that the said orders are liable to be set aside/reversed on the ground as contended in the affidavit filed in support of the writ petition.

6. We have heard the learned Counsel for the petitioners as well as the learned Counsel for the respondents 1 to 3 and perused the record.

7. It is contended by the learned Counsel for the petitioners that both the tribunals below have not appreciated that prior to the filing of the present

proceedings there were proceedings before the civil Court in O.S. No. 738 of 1989 on the file of the I Additional Junior Civil Judge, Nellore, which was instituted by the respondents 1 to 3 herein against the petitioners. It is contended that in the said suit both the parties had led evidence and the petitioners also had filed their documents, which were marked as Exs.B1 and B2, which supports the case of the petitioners that they are in possession of the property by virtue of the patta granted in favour of their father. The said documents having not been considered by the tribunals, it is contended that the findings of the tribunals below suffer from non-consideration of the petitioners' documents and as such are vitiated. It is also contended that the ingredients of land grabbing as contemplated under the Act by the definitions therein are not satisfied in this case inasmuch as the petitioners are in authorized possession of the property in pursuance of the patta granted by the Government and as such, cannot be held to be land grabbers. Finally, it is also urged that even if there is a mistake on the part of the counsel for the petitioners, the petitioners ought not to suffer and they are entitled to establish their defence with reference to Exs.B1 and B2.

8. Per contra, the learned Counsel for the respondents 1 to 3 submits that the petitioners have not let in any evidence, whatsoever, either before the primary tribunal or the appellate tribunal, in spite of several opportunities available to them. It is also contended that though the suit was originally filed by the respondents, the said suit was returned for presentation before the proper Court at the instance of the petitioners on the ground that the subject matter of the suit falls within the jurisdiction of Special Tribunal under the Act.

Learned Counsel, therefore, contends that since the said suit was not entertained and was referred to Special Tribunal at the instance of the petitioners, it is not open for them to contend that the case does not fall within the jurisdiction of the Special Court under the Act.

9. We have considered the aforesaid submissions. It is evident, no doubt, that originally the suit was filed by the respondents herein being O.S. No. 738 of 1989 but during the pendency of that suit, the petitioners herein raised objections that the suit is not maintainable and the matter has to be referred to Special Court and it is only thereafter that the present application under the Act was moved by the respondents 1 to 3. The contention of the learned Counsel for the petitioners, therefore, that the case does not fall within the parameters of the land grabbing as defined under the Act is untenable and in fact, permitting such a contention will amount to permitting the petitioners to approbate and reprobate, which is impermissible. Further, the basic allegations of the respondents 2 and 3 being that during the absence of respondents 1 to 3 the petitioners have grabbed the petition schedule land clearly show that the ingredients of "land grabbing" as defined under the Act are satisfied. In fact, following extract of the concise statement in LGOP. No. 4 of 1996 would clearly answer the said contention of the learned Counsel for the petitioners.

... the petitioners were dispossessed from the house constructed in the year 1987 January by the respondents with the held of police and rowdies and grabbed the said property. Recently the respondents have demolished the said thatched house and constructed a new house with bricks and mortar with thatched roof. The respondents are the trespassers in relation to the above said house site. They have no right whatever therein. The possession of the said houses by the respondents is unlawful. They are liable to deliver vacant possession of the same to the petitioners. Having committed the act of land grabbing, they are liable to be evicted therefrom and they are also liable to pay an amount of Rs. 50,000-00 as damages for wrongful possession of the site. Hence the petitioners pray that this Hon''ble Tribunal may be pleased to enquire into the matter and direct the respondents to deliver vacant possession of the above mentioned site and also award compensation of Rs. 50,000/- to the petitioners and also direct the respondents to pay costs of this petition.

The said contention of the learned Counsel for the petitioners, therefore, is rejected.

10. So far as the other contention is concerned, the Special Tribunal in it's judgment dated 01.08.2007 has noticed that the petitioners herein have not let in any evidence in support of their case. There was, therefore, no material before the Tribunal, which would show that the petitioners herein had any acceptable right to the property.

The lack of any evidence on the part of the petitioners, therefore, clearly shows that there was no rebuttal evidence on the part of the petitioners as against the oral and documentary evidence adduced by the respondents 1 to 3. In fact, the documentary evidence produced by the respondents comprised of patta granted in favour of their father Narayanaiah by the Tahsildar, Nellore in proceedings No. Rc.E.10695/78 dated 11.08.1980 as well as house tax receipts for the house constructed thereon as well as electricity supply card showing power connection as Ex.A6 and house hold supply card - Ex.A7 apart from exchange of legal notices between the parties marked as Exs.A3, A4 and A5. In addition to the above, Ex.X1 is the attested Xerox copy of the original proceedings of the District Collector, Nellore dated 17.07.1980, allotting Plot No. 213 to B. Narayanaiah and Ex.A2 is the attested Xerox copy of the patta issued in favour of B. Narayanaiah by Tahsildar, Nellore. The aforesaid documents coupled with the oral evidence of P.Ws.1 to 3, therefore, clearly established the prima facie title of respondents 1 to 3. It is well settled that under the provisions of the Act, once the applicants before the land grabbing Court establish prima facie title, the burden of proof u/s 10 of the Act, shifts on to the respondents in the land grabbing case. The prima facie title established by the respondents 1 to 3 (who are applicants before the land grabbing Court) was, therefore, rightly accepted by the tribunal in the absence of any rebuttal evidence on the part of the petitioners herein.

11. The Hon''ble Supreme Court had an occasion to consider Section 10 of the Act and it would be apt to notice the relevant paragraphs of its decisions. In

Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others, the Supreme Court held as follows,

19. The discussion of the above provisions would be incomplete without taking note of Section 10 of the Act which is a procedural provision and deals with burden of proof. A plain reading of this section would indicate that in any proceedings under this Act - (i) where a land is alleged to have been grabbed; and (ii) such land is prima facie proved to be the land owned by the Government or by a private person, the Special Court/Special Tribunal shall presume that the person who is alleged to have grabbed the land is a land grabber. When the presumption u/s 10 is drawn by the Special Court/Special Tribunal, the burden of proving that the land has not been grabbed by him is cast on the alleged land grabber. In view of the meaning of the words "shall presume" in Section 4 of the Indian Evidence Act, the effect of raising presumption u/s 10 of the Act would be that unless the alleged land grabber disproves that the land has been grabbed by him, the Special Court/Special Tribunal shall regard that the land in question has been grabbed by the alleged land grabber.

In State of Andhra Pradesh Vs. P.V. Hanumantha Rao (D) thr. Lrs. and Another, the Supreme Court held in para-29 as follows,

29. The provisions of the Act of 1982, which are to be understood in the light of the Statement of Objects and Reasons for the Act and the decision of this Court in the case of Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others, indicate that a mere doubt raised by the State on the title and possession of the occupant of a land does not make him "a land-grabber". Whenever the right of the occupant is questioned by the State, it is not enough for the occupant to show that he has a prima facie bona fide claim to the land occupied but a burden is cast on him to prove that he is in occupation or possession of the land under a lawful title.

12. Learned Counsel for the petitioners has tried to contend that their documents - Exs.B1 and B2, which were marked in the previous civil suit, were sent for in the LGOP, but unfortunately they were not marked before the Special Tribunal. It is also well settled that merely filing the documents or merely calling for the documents, by itself is not sufficient unless such documents are tendered in evidence and proved in accordance with law. Even if the said documents were sent for and received by the Special Tribunal, unless the same are admitted in evidence in accordance with law and proved by the petitioners, no reliance could have been placed on the said documents. The special tribunal, therefore, has rightly proceeded on the footing that the petitioners herein have failed to adduce any evidence in support of their case.

13. Before the Special Court similar contention was raised on behalf of the petitioners that the Tribunal has not considered Exs.B1 and B2 marked in the suit and the Special Court has also rightly observed that those documents having been not marked in the OP nor the petitioners herein having adduced any

evidence, the question of finding fault with the tribunal does not arise. It is also noteworthy that the Tribunal had earlier decided the LGOP under its order dated 08.09.2003 against respondents 1 to 3 herein. However, on appeal by the respondents 1 to 3 herein, the Special Court, by its order in LGA. No. 3 of 2004 dated 22.11.2006, had set aside the said order and remanded the matter to the Special Tribunal for fresh disposal by giving opportunity to both parties to let in evidence and also by directing the Mandal Revenue Officer concerned to file statutory verification report as contemplated under Rule 6 of the Rules framed under the Act. Thus, even assuming that the petitioners had not taken steps to adduce evidence and marked their documents during the earlier opportunity, they had ample opportunity when the LGOP was remitted for fresh disposal under the aforesaid order of the Special Court. In fact, specific opportunity to both parties to let in evidence was provided but the same has not been taken advantage of by the petitioners for the reasons best known to them. The contention of the petitioners, therefore, that the impugned orders are passed in ignorance of the said documents - Exs.B1 and B2 is devoid of any substance, as the said documents were not before either of the tribunals below and as such, it cannot be said that non-consideration of the said documents has vitiated the findings of the Special Tribunal as well the Special Court.

14. Finding the aforesaid difficulty in the submissions made by the learned Counsel for the petitioners, a request was also made that even if there is any mistake committed by the petitioners, an opportunity may be given by remanding the matter so as to enable the petitioners to lead evidence and exhibit the said documents. The aforesaid submission also cannot be accepted as it is well settled that an order of remand cannot be made merely for the asking. In fact, under the Code of Civil Procedure, 1908, a remand of proceeding is permissible only in specific situations as covered by Order 41 Rule 23, Order 41 Rule 23 (A) and Order 41 Rule 25 CPC.

Order 41, Rule 23 of CPC reads as under,

23. Remand of case by Appellate Court.-Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Order 41, Rule 23-A of CPC reads as follows,

23-A. Remand in other cases.-Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the

Appellate Court shall have the same powers as it has under Rule 23.

Order 41, Rule 25 of CPC reads as under,

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.-Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefore within such time as may be fixed by the Appellate Court or extended by it from time to time.

15. Considering the aforesaid provisions, it has been held by the Supreme Court that unless the case on hand falls within any of the parameters of Order 41, Rules 23, 23A or 25 of CPC, there is no inherent power in the appellate Court to remand the matter. Firstly, the petitioners have already exhausted the remedy of appeal provided under the Act before the Special Court and no such contention, as is now urged in this writ petition, is urged before the appellate court. Further in a writ jurisdiction invoked against the appellate order of the Special Court, the rigor of the aforesaid provisions would apply with all force and merely on account of the alleged lapse on the part of the petitioners, it would be wholly improper to remand the matter back to the Tribunal. The proceedings in the Land Grabbing Case instituted by the respondents herein are pending since 1996 and after two rounds of litigation upto this Court, ordering remand once again to enable the petitioners to produce documentary evidence, which they have failed to produce, during all the opportunities earlier available, would be wholly unjust so far as the respondents are concerned. We are fortified in our view by the decisions of the Supreme Court in Mahendra Manilal Nanavati Vs. Sushila Mahendra Nanavati, and P. Purushottam Reddy and Another Vs. Pratap Steels Ltd., . In Mahendra Manilal Nanavati's case (3rd supra) in para-181 the Supreme Court held as follows,

181. Rule 25 circumscribes the powers of the appellate Court to frame an issue and refer the same for trial to the Court below, if need be by taking additional evidence, and permits it to adopt this course only if (a) the trial court had omitted to frame an issue, (b) try an issue or (c) to determine any question of fact which appears to the appellate court essential to the right decision of the suit upon the merits. In this case, the High Court has purported to exercise its powers upon the ground that proper issues were not framed by the trial court. I have already indicated above that the content of the two additional issues framed by the High Court is to be found in three of the issues raised by the City Civil Court. Therefore, there was no scope for the exercise by the High Court of its power under Rule 25. No doubt, the High Court has made no reference to

Rule 25 when it framed the additional issues and sent them down for a finding; but its action must be referable to Rule 25, because that is the provision of law which deals with the question of remitting issues for trial to the trial court. I may add that in view of the express provisions of this rule the High Court could not have had recourse to inherent powers, because it is well settled that inherent powers can be availed of *ex debito justitiae* only in the absence of express provisions in the Code.

In *P. Purushottam Reddy's* case (4th supra) the Supreme Court in para 10 held as follows,

10. The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23A in Order 41 of the CPC by the CPC Amendment Act, 1976, there were only two provisions contemplating remand by a court of appeal in Order 41 CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on preliminary issue is reversed in appeal. Rule 25 applies when the appellate court notices an omission on the part of the trial court to frame or try any issue or to determine any question of fact which in the opinion of the appellate court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand inasmuch as the subordinate court can try only such issues as are referred to it for trial and having done so, the evidence recorded, together with findings and reasons therefore of the trial court, are required to be returned to the appellate court. However, still it was a settled position of law before the 1976 Amendment that the court, in an appropriate case could exercise its inherent jurisdiction u/s 151 CPC to order a remand if such a remand was considered pre-eminently necessary *ex debito justitiae*, though not covered by any specific provision of Order 41 CPC. In cases where additional evidence is required to be taken in the event of any one of the clauses of Sub-rule (1) of Rule 27 being attracted, such additional evidence, oral or documentary, is allowed to be produced either before the appellate court itself or by directing any court subordinate to the appellate court to receive such evidence and send it to the appellate court. In 1976, Rule 23-A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23-A as it is under Rule 23. After the amendment, all the cases of wholesale remand are covered by Rules 23 and 23-A. In view of the express provisions of these Rules, the High Court cannot have recourse to its inherent powers to make a remand because, as held in *Mahendra Manilal Nanavati Vs. Sushila Mahendra Nanavati*, it is well settled that inherent powers can be availed of *ex debito justitiae* only in the absence of express provisions in the Code. It is only in exceptional cases where the court may now exercise the power of remand *dehors* Rules 23 and 23-A. To wit, the

superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 41 Rule 31 CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for rewriting the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25 CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided.

16. The situation as contemplated under Order 41 Rule 23 as well as Rule 23(A) does not arise in this matter, as the proceedings before the tribunal have been disposed of on merits on all the issues and retrial is not necessary. Further, this is also not a case, which would fall in any of the ingredients of Order 41 Rule 25 CPC where any issue has not been framed or tried; nor is a case where any question of fact necessary to be decided has not been decided; nor is a case where additional evidence is required for adjudication of the case. The power of remand, therefore, is not automatic and not merely for the asking as such, we are not in a position to accept the said request of the learned Counsel for the petitioners.

17. The failure on the part of the petitioners to lead evidence, oral and documentary, in support of their case, in spite of two opportunities available to them, cannot be ignored and the impugned judgments, which are completely sustainable, cannot be set aside merely to provide one more opportunity to the petitioners to lead evidence. The said contention of the learned Counsel for the petitioners, therefore, is also rejected.

In the circumstances, the writ petition deserves to be dismissed and is accordingly dismissed. However, there shall be no order as to costs.