

(1996) 10 AP CK 0062
In the Andhra Pradesh High Court
Case No : Writ Petition No. 20616 of 1996

K.V. Sreenivasa Rao

APPELLANT

Vs

The Special Court under A.P. Land Grabbing (Prohibition) Act
1982 at Hyderabad and Others

RESPONDENT

Date of Decision : 07-10-1996

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 15

Citation : (1996) 4 ALD 1033 : (1996) 2 ALD(Cri) 893 : (1996) 4 ALT 844

Hon'ble Judges : Lingaraja Rath, J;C.V.N. Sastri, J

Bench : Division Bench

Advocate : K. Kodanda Rami Reddy, for the Appellant; S.S.N.C.
Singaracharyulu, for the Respondent

Judgement

1. The learned Counsel on either side have appeared. With the consent of the parties, the case is heard and disposed of.

2. Respondent No.1 before the Special Court under A.P. Land Grabbing (Prohibition) Act is the petitioner before us assailing the judgment delivered by that forum in L.G.C. No. 164 of 1994. Respondent No. 2 filed the case before the Land Grabbing Court seeking relief against the petitioner as also Respondent No. 3 for acts of land grabbing alleged to have been made by them. Her case before the Court was that she was purchaser of Plot No. 60 in Survey Nos. 41/1 and 474 of Malkajgiri Mandal, R.R. District on 11-5-1992 and that the petitioner, who had earlier purchased the adjacent Plot No. 59 to the west of Plot No. 60, had encroached 55 sq. yards from that plot and that likewise Respondent No. 3, who was the purchaser of Plot No. 58 to the west of Plot No. 59 had encroached 45 sq. yards in Plot No. 59. The petitioner contested the case saying that he had purchased the house on Plot No. 59 on 3-9-1987 from V.S. Kathija Bee and M/s. G. Laxmaiah & Sons and that he had not made any encroachment on Plot No. 60.

3. The admitted facts are that Acs. 4-08 guntas of agricultural land in Survey Nos. 41 /1 and 474 of Malkajgiri Mandal, R.R. District, had originally belonged to

one Mr. Ramakrishna Reddy and his three sons. The four persons obtained a certificate of exemption from Urban Land Ceiling Authorities to the extent that the land did not come under the purview of the Urban Land (Ceiling & Regulation) Act, 1976, and thereafter, converting the lands to house plots, sold the land to different persons. Plot No. 59 was purchased under Ex.B-3 on 21-11-1978 by Sri V.S. Kathija Bee, wife of Mohd. Hussain. She applied for permission to the Gram Panchayat, Malkajgiri Mandal for construction of a building on the land and with sanction accorded on 15-2-1979 and plan Ex.B-4 sanctioned, she constructed the house. A portion of the house was sold by her on 14-2-1985 to a partnership firm M/s. G. Laxmaiah & Sons. Subsequently on 3-9-1987, a sale deed was executed by Kathija Bee and her vendee G. Laxmaiah & Sons for the entire plot No. 59 of 340 sq. yards including the house bearing No. 24-89 /3 and 24-89 /3 A to the petitioner. The sale deed is Ex.B-2. Respondent No. 3 had purchased Plot No. 58, an extent of 311 sq. yards, from the original owner of the land B. Rama Krishna Reddy and his three sons under Ex.A-3 sale 40 deed dated 18-4-1979. So far as Respondent No. 2 is concerned, she had purchased Plot No. 60 along with the house under sale deeds Exs.A-1 and A-2 from N.C.S. Sarma and N.C.N. Murty, who were brothers and purchased the land of an extent of 460 sq. yards from the original owners.

4. In the proceedings before the Land Grabbing Court, an advocate-commissioner was appointed to measure the lands who was also provided with assistance of a surveyor. The report of the Commissioner is Ex.C-2 and the sketch prepared by the surveyor is Ex.C-4. In the report the Commissioner said that Plot No. 51 (sic. 58) has 89 sq. yards of excess land of which 45 sq. yards belongs to Plot No. 59 and 44 sq. yards belongs to others. Plot No. 59 has 9 sq. 5 yards of excess land of which 1.00 sq. yard belongs to others and Plot No. 60 has less land of 53 sq. yards.

5. The Land Grabbing Court reached the conclusion that on a combined reading of Exs.C-2 and C-4 it was indicated that Respondent No. 3 had encroached upon 45 sq. yards of Plot No. 59 belonging to the petitioner and the petitioner had in turn encroached upon 53 sq. yards of Plot No. 60 belonging to Respondent No. 2. Accordingly allowing the case of Respondent No. 2, the Land Grabbing Court declared the petitioner and Respondent No. 3 as land-grabbers and directed the petitioner and Respondent No. 3, after demarcations of Plot Nos. 58,59 and 60, to put respondent No. 2 in possession of the entire extent of her purchased land within two months from the date of the order. The Special Court also directed removal of the constructions upon the encroached land.

6. It was the specific case of the petitioner that he had purchased the house constructed in 1979 by Kathija Bee. There is no dispute about the fact that the house had been constructed in 1979 and since then Kathija Bee and thereafter, in respect of a portion of the house, M/s. G. Laxmaiah & Sons and, thereafter, the petitioner has been in possession of the entire house. Respondent No. 2 in her application specifically stated the cause of action for her to have arisen on

11-5-1992 and "On-----when the Opposite Party No. 1 erected the barbed wire informing the applicant herein on a portion of the applicant's above said Plot No. 60". The blank after the word "on" was left vacant. It being the specific case of the petitioner that the building which had been purchased was there since 1979 and the Land-Grabbing Case was filed in 1994, the question of perfection of title by adverse possession by the petitioner arose as there cannot be any doubt that when a house is constructed upon a piece of land which does not belong to the owner of the house, adverse possession starts to run from the date the house is constructed. It is not seen from the perusal of the judgment impugned that the question was considered by the Land Grabbing Court. It is submitted before us by Mr. S.S.N.C. Singaracharyulu, who has appeared for Respondent No. 2 and has argued the matter fully, that the concept of perfection of title by adverse possession is contrary to the provisions of the Land Grabbing (Prohibition) Act which in Section 15 provides overriding effect of the Act over other laws. The submission is misconceived as there is nothing in the Act to hold the provisions of Limitation Act as regards adverse possession to have been given a go-by under the provisions of the Land Grabbing (Prohibition) Act. It is true that under the Act a different limitation period could have been prescribed as the Act is one with the assent of the President. But unless that is done, the provisions of the Limitation Act, so far as not inconsistent with the provisions of the Land Grabbing (Prohibition) Act, would supplement the later Act. That being so, the question of paramount importance was whether the petitioner, who stepped into the shoes of his vendors, had perfected the title by adverse possession in respect of any encroachment, if at all, on Plot No. 60 by virtue of construction of the house in 1979. That apart, the Commissioner's report only showed the owner of Plot No. 58 Respondent No. 3, to have encroached 45 sq. yards in Plot No. 59 but did not show the petitioner to have encroached any land upon Plot No. 60. The report did not say that the excess 9 sq. yards found in Plot No. 59 of which 1 sq. yard was of others, was an encroachment upon Plot No. 60. To whom the excess 8 sq. yards belonged and where is that 8 sq. yards was not specified in the report. It could not be axiomatically concluded that that 45 sq. yards plus 8 sq. yards found in excess in Plot No. 59, altogether making 53 sq. yards, had been encroached upon by the owner of Plot No. 59 on Plot No. 60. There is no warrant for the conclusion that a reading of Ex.C-2 and Ex.C-4 would lead to such inference.

7. Because of such considerations, we find the order of the learned Special Court to be untenable in law and hence we set aside the same with costs.