
(2003) 03 AP CK 0068

In the Andhra Pradesh High Court

Case No : Transfer C.M.P. No. 388 of 2002

M. Narayana Chowdary

APPELLANT

Vs

Meherbaba Plots Owners Welfare Association

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2, 7, 9
Civil Procedure Code, 1908 (CPC) — Section 24, 3, 4, 5
Constitution of India, 1950 — Article 226

Citation : (2004) 2 ALT 23

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

Bench : Single Bench

Advocate : P. Venkataswamy, for the Appellant;

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—CMP.No.5983 of 2003 in CMP.No.20259 of 2002 in Tr.CMP.No.388 of 2002 is filed by the respondents in the transfer CMP to vacate the interim stay granted by this Court and at this stage both the counsel had argued the main transfer CMP and that is how the transfer CMP is being disposed of finally.

2. The relief prayed for in the present transfer CMP is to order transfer of O.S.NO.441 of 2002 on the file of the Principal Senior Civil Judge, Ranga Reddy District to the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as "the Act" for short) for the purpose of clubbing the same along with L.G.C.No.77 of 2001 on its file, and to pass such other suitable orders. It is needless to say that the present transfer CMP is filed u/s 24 of the CPC (hereinafter referred to as "the Code" for short). In view of the relief prayed for in the transfer CMP, an objection is raised as to the maintainability of the transfer CMP u/s 24 of the Code.

3. Heard both the counsel.

4. A.P. Land Grabbing (Prohibition) Act, 1982, Act No.12 of 1982 is an act to prohibit the activity of Land Grabbing in the State of Andhra Pradesh and to provide for matters connected therewith. Section 2 of the Act, 1982 for the purpose deals with definitions. Section 2(d) of the Act defines "land grabber" and Section 2(e) of the Act defines "land grabbing". Section 2(i-a) and 2(i-b) of the Act defining Special Court and Special Tribunal may be more relevant for the present purpose and the aforesaid expressions Special Court and Special Tribunal are defined under the Act as specified hereunder:

"Special Court means a Special Court constituted u/s 7."

"Special Tribunal means a Court of the District Judge having jurisdiction over the area concerned and includes Chief Judge, City Civil Court, Hyderabad."

5. The relief prayed for in the present transfer CMP is to transfer the suit pending on the file of Principal Senior Civil Judge, Ranga Reddy District to be tried along with L.G.C pending on the file of the Special Court under the Act. Section 3 of the Code dealing with Subordination of Courts reads as hereunder:

"For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court."

6. Likewise Section 4 of the Code dealing with Savings reads as follows:

(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

7. Section 5 of the Code deals with Application of the Code to Revenue Courts.

8. Section 9 of the Act deals with Special Court to have the powers of the Civil Court and the Court of Sessions and this provision reads as follows:

"Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, (Central Act 5 of 1908) the Andhra Pradesh Civil Courts Act, 1972 (Act, 19 of 1972) and the Code of Criminal Procedure, 1973, (Central Act, 2 of 1974) in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of Session and shall have all the powers of a Civil Court and a Court of session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor".

9. It is no doubt true that in Section 9 it is specified "Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, the Andhra Pradesh Civil Courts Act, 1972 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court". It is also no doubt true that it is further specified "Special Court shall be deemed to be a Civil Court".

10. The question is whether in view of this provision, can it be said that the power of transfer u/s 24 of the Code can be exercised for the purpose of transferring a civil suit on the file of an ordinary Civil Court to a Special Court or a Tribunal under the Act or even vice versa?

11. In *J. SITARAMA RAO v. STATE*¹, a Division Bench of this Court while dealing with the Agency Court held that Agency Court is Subordinate to High Court within the meaning of Section 24 of the Code. It is needless to say that the orders made by the Special Courts under the Act are being questioned by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, merely because u/s 9 of the Act, Special Court is deemed to be a Civil Court. It cannot be said that the Special Court can be equated with any other ordinary Civil Court so as to make it amenable for the purpose of exercising jurisdiction of this Court by invoking powers u/s 24 of the Code of Civil Procedure. It is also needless to say that Section 24 of the Code is general provision dealing with the transfer of proceedings relating to Civil Courts. Even, in the light of the powers which can be said to be exercised, civil and criminal vested under the Act, the Special Court cannot be equated with the ordinary Civil Court. Viewed from any angle, the relief prayed for in the transfer CMP cannot be granted by exercising powers u/s 24 of the Code since, the Special Court under the Act cannot be a Civil Court for the purpose of Section 24 of the Code. Hence, the remedy of invoking the jurisdiction of this Court u/s 24 of the Code definitely is a misconceived remedy.

12. Inasmuch as the transfer CMP is dismissed on the question of maintainability, liberty is given to the petitioners to invoke appropriate remedy, if they are so advised in this regard. Except, making this observation no further relief can be granted in the present transfer CMP.

13. Accordingly, transfer CMP is dismissed subject to the above observation. This Court makes no order as to costs in the facts and circumstances of the case.