
(2008) 11 AP CK 0029
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17004 of 2008

Mohd. Altaf

APPELLANT

Vs

The Special Court under APLG (P) Act and Others

RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2, 8(6)
Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 — Rule 15(2), 6
Constitution of India, 1950 — Article 226

Citation : (2009) 2 ALD 504 : (2009) 3 ALT 64

Hon'ble Judges : V. Eswaraiah, J;K.C. Bhanu, J

Bench : Division Bench

Advocate : Syed Shareef Ahmed, for the Appellant; GP for Revenue for Respondent Nos. 1, 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—This writ petition has been filed against the order, dated 04-01-2008, in L.G.C. No. 25 of 2007 passed by the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad (for short "the Special Court").

2. The said L.G.C. has been filed by the 2nd respondent herein against the 6th respondent herein claiming that he is the owner of the application schedule property admeasuring 433 sq. yards equivalent to 361.99 sq. mtrs., in Sy. No. 140, Plot No. 101, situated at Almasguda Village, Saroornagar Mandal, Ranga Reddy District, having purchased the same from Samreddy Bal Reddy under registered sale deed, dated 20-08-1981 (Ex.A-1). Initially, the said property was the ancestral joint family property of one Samreddy Bal Reddy and four others and all the family members of the joint family appointed the said Samreddy Bal Reddy as General Power of Attorney under a registered General Power of Attorney, dated 21-07-1981 and he sold the said property in favour of the 2nd respondent herein. After purchase of the said property, the 2nd respondent was regularly visiting the property in question up to 2006. While so, when he visited

the said property in November, 2006, he noticed that the 6th respondent grabbed the said property and constructed a house over the said property and that he has been in possession of the same. Thereafter, the 2nd respondent obtained encumbrance certificate in respect of the said property, which revealed that there is no other transaction except the transaction under which he purchased the said property.

3. It is further stated that the 2nd respondent made several attempts to contact the 6th respondent, but the 6th respondent failed to contact him and therefore, he filed L.G.C. No. 25 of 2007 before the Special Court. The Special Court took cognizance of the case on 16-03-2007 and the factum of taking cognizance was published in A.P. Gazette Extraordinary No. 85, dated 31-03-2007. But, however, no objections were received by the Special Court. The Mandal Revenue Officer, after receipt of notice, filed verification report as required under Rule 6 of the A.P. Land Grabbing (Prohibition) Rules, 1988 (for short "the Rules"). However, it is stated that the notice sent to the 6th respondent-land grabber was not served and, therefore, substitute service was permitted, which was published in the Siasat Daily and Deccan Chronicle English daily, Hyderabad edition, directing 6th respondent to appear before the Special Court on 03-10-2007. On 03-10-2007, the proof of publication was filed before the Special Court. However, 6th respondent did not appear before the Special Court and, therefore, 6th respondent was set ex-parte.

4. On 22-10-2007, the 2nd respondent-applicant was examined as PW.1 and Exs.A-1 to A-7 were marked on his behalf. Exs.A-1 to A-4 are the documents relate to purchase of the property in question and Exs.A-5 to A-7 are the encumbrance certificates in respect of the said property.

5. Basing on the said oral and documentary evidence and in view of the verification report filed by the Mandal Revenue Officer, the Special Court observed that 6th respondent was in occupation of the said property by constructing a house thereon. However, there is no dispute with regard to identity or location of the property. The Special Court further observed that 2nd respondent established his ownership over the said property and about grabbing of the same by 6th respondent and accordingly, declared 6th respondent as a land grabber within the meaning of Clause (d) of Section 2 of Act XII of 1982. Accordingly, the Special Court, by order, dated 04-01-2008, allowed the application declaring 6th respondent as a land grabber, and directed 6th respondent to vacate the application schedule property within a period of two months from the date of the said order. Else, the Revenue Divisional Officer concerned was directed to evict the 6th respondent and handover the vacant possession to 2nd respondent herein within a period of two months thereafter and directed to submit compliance report to the Special Court as required under Rule 15(2) of the Rules framed under the Act.

6. It is stated that despite the order, dated 04-01-2008, passed by the Special Court, 6th respondent failed to vacate the said property and, therefore, the

Revenue Divisional Officer concerned has taken steps to evict 6th respondent. At that juncture, the petitioner came to know about passing of the order by the Special Court in L.G.C. No. 25 of 2007. However, it is stated that the Revenue Divisional Officer-3rd respondent under a cover of panchanama, dated 09-07-2008, delivered the property to the applicant-2nd respondent.

7. It is the case of the petitioner that after obtaining leave of this Court to question the order of the Special Court in L.G.C. No. 25 of 2007, he filed this writ petition contending that he purchased the property admeasuring 433 sq. yards in Plot No. 101 in Sy. No. 140 under a registered sale deed, dated 08-09-1988 i.e., after seven years of the purchase alleged to have been made by 2nd respondent, and in fact, the house, which is existing in the said property, was constructed by the petitioner, but not by 6th respondent. Further, it is stated that the gram panchayat also assessed the house to tax and he has been residing in the said property with his family, without any complaint whatsoever.

8. It is further stated that taking cognizance of the case by the Special Court is illegal and without any justification. Admittedly, 6th respondent remained ex-parte. The petitioner is not a party to the L.G.C. However, the 2nd respondent filed L.G.C. against 6th respondent, who is not at all a grabber and who has no right, title or possession over the said property. In fact, the petitioner has got right, title and possession as he himself constructed the house. Therefore, filing of the land grabbing case against 6th respondent and submitting the report by the Mandal Revenue Officer are incorrect and untrue and, as such, the Special Court ought not to have passed the said order.

9. Sri Syed Shareef Ahmed, learned Counsel for the petitioner, submits that the petitioner has no right of appeal or review against the order of the Special Court and he cannot also file a civil suit for declaration of his right, title and interest, and recovery of possession and, therefore, the remedy available to him is only under Article 226 of the Constitution of India.

10. Now, the points that arise for consideration in this Writ Petition are:

(i) Whether a third party can question the order passed by the Special Court constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 ?

and

(ii) what is the remedy available to a third party against the orders passed by the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 ?

11. We have perused the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as, "the Land Grabbing Act") and the Rules therein. The Land Grabbing Act came into force with effect from 6.9.1982. The Act is enacted to prohibit the activities of land grabbing in the State of Andhra Pradesh and to provide for matters connected therewith. Whereas, 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, who are known as land grabbers.

12. The word "land grabber", as defined u/s 2(d) of the Land Grabbing Act, reads thus:

2(d) "Land grabber" means a person or a group of persons who commits land grabbing and includes 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 the doing of any of the above mentioned acts, and also includes the successors in interest.

Similarly, the word "land grabbing", as defined u/s 2(e) of the Land Grabbing Act reads thus:

2(e). "Land grabbing" means 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 licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorized 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 unauthorized structures; and the term "to grab land" shall be construed accordingly.

13. A perusal of the above provision makes it clear that the person, without any lawful entitlement and with a view to illegally taking possession of the lands, commits any other acts mentioned in Clause (e), is said to be a land grabber. By virtue of the Land Grabbing Act, land grabbing in any form is declared unlawful and any activity connected with or arising out of, land grabbing, shall be an offence punishable under this Act.

14. The word "unlawful entitlement" means, "it must have some foundation in a legal right to possess the property, which cannot be equated with temporary right to enforce recovery of the property, in case a person is wrongfully or forcibly dispossessed from it". So, "lawful possession" must mean legal possession with a right to enjoy the property in his own interest and manner. Such lawful entitlement should not be forbidden by law. Therefore, every activity of grabbing of any land by a person without any lawful entitlement, is the first sine qua non for bringing the same within the purview of the land grabbing. The second requirement is that, with a view to illegally taking possession of such lands, which would necessarily mean that the act is contrary to the principles of law. "With a view to illegally taking possession" would necessarily mean, unauthorized entry or against law, or not authorized by law. When the two requirements of Clause (e) of Section 2 of the Land Grabbing Act, are fulfilled,

the Special Court constituted under the Act, will get jurisdiction.

15. u/s 8(6) of the Land Grabbing Act, every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land. Third proviso thereto, provides that, the Special Court shall cause a notice of taking cognizance of the case under the Act, served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land.

16. Admittedly, such notice is not served on the present petitioners. A third party, in the absence of service of any notice as provided under the Act, can invoke the jurisdiction of this Court under Article 226 of the Constitution of India, provided the necessary ingredients of appropriate Writ have been fulfilled.

17. The petitioner in the Writ Petition is seeking to issue a writ of certiorari. Whenever any body of persons (a) having legal authority, (b) to determine questions affecting rights of subjects, (c) having the duty to act judicially, (d) act in excess of their legal authority, writ of certiorari can be issued to quash the decision that goes beyond jurisdiction. The object of this Writ is to keep exercise of powers by an inferior judicial and quasi-judicial Tribunals within the limits of the jurisdiction assigned to them by law and to restrain from acting in excess of their authority, by removing to the High Court, the proceedings of the inferior Court or Tribunal for the purpose of quashing them.

18. It is also settled that even where the Tribunal has acted within its jurisdiction, writ of certiorari will lie, where the order of inferior Tribunal has been obtained by fraud, collusion or corruption, or where its decision is vitiated by an error of law apparent on the face of the record, as distinguished from error of fact. But, the third party to the proceedings invoking jurisdiction of this Court under Article 226 of the Constitution of Indian, can as well show that the order of the Special Court has been obtained by fraud or collusion, or the Court has acted without its jurisdiction. Before invoking the jurisdiction of this Court under Article 226 of the Constitution of India, a third party must show that he has got right, title and interest in the land in question, and the party obtained the order from the Special Court has no right, title and interest in the property. Therefore, we are of the opinion that, in certain circumstances, third party can invoke the jurisdiction under Article 226 of the Constitution of India, against the orders passed by the Special Court under the Land Grabbing Act. Therefore, the first point is answered accordingly.

19. Coming to the second point, in the instant case, it is alleged by the 2nd respondent that the 6th respondent grabbed the property in question and that the 2nd respondent is the lawful owner and, therefore, the title of the 2nd

respondent was decided by the Special Court declaring the 6th respondent as a land grabber. As a matter of fact, learned Counsel for the petitioner submits that the petitioner is the actual owner of the property in question. If that be so, the alleged dispute between the petitioner and the 2nd respondent is with regard to the title of the said property. There is no dispute with regard to the identity or location of the schedule property. However, the same property is being claimed by the petitioner as well as the 2nd respondent. According to the petitioner, he had purchased the property in question in the year 1988 and according to the 2nd respondent, he had purchased the property in question in the year 1981. Thus, the sale deed of the 2nd respondent is earlier to the sale deed of the petitioner.

20. We are of the opinion that the title of the rival claimants cannot be decided by the Special Court, unless there is an act of allegation of grabbing in such cases. Since the petitioner being not a party to the land grabbing case, it cannot be said that he has no right to file a civil suit for declaration of his title and recovery of possession, if he is illegally dispossessed. As the controversy is with regard to the lawful ownership of the said property, the same cannot be decided by this Court.

21. Accordingly, the writ petition is dismissed. However, the petitioner can invoke remedies available to him under common law. But, however, status quo obtaining as on today shall be maintained for a period of four weeks from today. If any such suit is filed by the petitioner, the same may be disposed of in accordance with law, uninfluenced by any of the observations made in this order as well as the order of the Special Court. There shall be no order as to costs.