

(2011) 07 AP CK 0092

In the Andhra Pradesh High Court

Case No : City Civil Court Appeal No : 61 of 1990

Mrs. Nalini Narain and Others

APPELLANT

Vs

Mrs. Prabhavathi Reddy Ravi @ Ravi Prabhavathi and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2, 6, 7A(4), 8, 8(6)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 12 Rule 1, 80(2)

Citation : (2011) 07 AP CK 0092

Hon'ble Judges : V. Eswaraiyah, J;B. Chandra Kumar, J

Bench : Division Bench

Advocate : Sunil Bhaskar Ganu and Sri M. Papa Reddy, for the Appellant; D. Prakash Reddy, Appearing for Sri Raghuveer Reddy Counsel for the Respondent Nos. 4 to 6 G.P. For Appeals, for the Respondent

Judgement

Sri Justice B. Chandra Kumar

1. This appeal is directed against the judgment and decree dated 04.06.1990 passed in O.S. No. 335 of 2003 by the Additional Chief Judge, City Civil Court, Hyderabad (Temp), whereby and whereunder, the suit filed by the first Respondent herein for declaration of title and for recovery of possession and damages was decreed

2. The Appellants 1 to 4 herein are Defendants 1, 2, 5 and 6 respectively and the Respondent No. 1 herein is the Plaintiff, Respondents 2 and 3 herein are Defendants 3 and 4 respectively before the Court below. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the Court below.

Brief facts of the case:

3. The dispute is with regard to the suit schedule property, which is shown as "A" schedule plot bearing Municipal No. 8-2-120/86/9, admeasuring 1350 square yards demarcated as sub Plot No. 3 in Major Plot No. 11 situated at Banjara Hills,

Hyderabad. "B" schedule property is shown as 900 square yards of land forming extreme eastern and southern part of the "A" schedule property. "C" schedule property is shown as 450 square yards of land forming north-eastern part of the "A" Schedule Property (the "A" schedule property will be hereinafter referred to as "suit schedule property"). The suit schedule property originally belonged to one Sofia Begum. The third Defendant - Smt. Rangamma and Smt. Ahmed Bee claimed their title through said Sofia Begum. Smt. Rangamma and Smt. Ahmed Bee, through their G.P.A. - Sri T.V. Ramachandraiah - the fourth Defendant sold the suit schedule property to Smt. Anasuya - the mother of the Plaintiff vide Ex.A.2 -Registered Sale deed dated 19.05.1965. The Plaintiffs mother got her name mutated in the Assessment Register of the Municipal Corporation of Hyderabad. In support of her claim, she has relied upon Ex.A.3 -Intimation letter dated 31.07.1965 sent by the Municipal Corporation of Hyderabad to the effect that mutation of the name of the mother of the Plaintiff has been effected in the Municipal Assessment Register and Ex.A.4 certificate dated 30.07.1965 issued by the Municipal Corporation of Hyderabad.

4. The Plaintiffs father Sri G. Sanjeeva Reddy is Minister in Government of Andhra Pradesh from 1968 to 1971. He filed a declaration as required under the provisions of the A.P. Urban Land (Ceiling and Regulation) Act, 1976, and had shown the suit schedule property in his declaration. Government of A.P. have also issued orders vide G.O. Ms. No. 1760 dated 17.10.1978 exempting the vacant land of 654.5 Square Metres from the provisions of the above referred Act. The Plaintiff has relied on Ex.A.5 and A.6 in support of her contention in this regard. The further case of the Plaintiff is that her mother gifted the suit schedule property to her in the year 1972, but however, the Gift Deed to that effect, vide Ex.A.7, was executed on 13.03.1979 by her mother in her favour. It is also her case that the Plaintiff was residing in USA after her marriage and that her father was looking after her properties and in June, 1981, her father informed her that due to his pre-occupation with his political and social works, he could not supervise and look after the suit schedule property and that the first Defendant was found in possession of "B" Schedule Property and the second Defendant was found in possession of "C" Schedule Property and that when he enquired about their possession of the suit schedule property, Defendants 1 and 2 informed that they purchased the suit schedule property from Defendants 3 and 4. Then the Plaintiff got issued legal notice dated 17.06.1981 vide Ex.A.8 to the first Defendant and Ex.A. 11 legal notice dated 26.11.1981 to the second Defendant and then filed the suit for declaration of title, recovery of possession and for past and future damages.

5. The first Defendant filed written statement and denied the material averments made by the Plaintiff. According to the first Defendant, he has no knowledge about the alleged purchase of the suit schedule property by the mother of the Plaintiff through registered sale deed dated 19.05.1965 and also with regard to the declarations filed by her father under the provisions of Urban Land Ceiling Act and about the registered Gift Deed dated 13.03.1979 said to have been executed

by the mother of the Plaintiff in favour of the Plaintiff. The specific case of the first Defendant is that the Plaintiff was never in possession of the suit schedule property and that there was neither sign board on the site displaying the name of the Plaintiff nor any boundary stones were fixed and the entire area was rocky with boulders. Her specific case is that Defendant No. 4 was at the site and he was in factual possession of the suit schedule property. It is also her case that when she ascertained the municipal records from the year 1965 to 1979 the names of Defendant No. 3 and her erstwhile partner - Ahmed Bee were shown as actual owners and possessors of the suit schedule property. It is also her case that the Encumbrance Certificates obtained from the office of the Sub-Registrar for the period between 1950 and 1958 and from the year 1959 to 1981 in respect of suit schedule property shown "NIL" encumbrances. It is also her case that she has purchased the "B" schedule property from the original owners through registered sale deed dated 21.06.1979 vide Ex.B.6 for a valuable consideration and thereafter sold 410 square yards of land in "B" Schedule Property to Defendants 5 and 6 on 12.08.1980.

6. It is also her case that the alleged Gift Deed dated 13.03.1979 executed by the mother of the Plaintiff in favour of the Plaintiff is invalid, if at all executed. It is also her specific case that after the purchase of "B" schedule property, she has constructed a house with enormous costs in the year 1981 and that Defendants 5 and 6 have also constructed their residential house in "C Schedule property during the period 1980 - 1981. It is also her case that before selling the property to Defendants 5 and 6, she had applied to the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, and the same was acknowledged. It is also her case that no one raised any objection at the time of construction of her house on the suit schedule property, which went on for two years, i.e, from 1979 to 1981. Thus, the specific case of the first Defendant is that the A" Schedule Property comprising of "B" and "C Schedule Property was never in possession and enjoyment of the Plaintiff and her mother since May, 1965 to 1979 and that even if the Plaintiff and her mother had any subsisting right over the land, they have lost their title, interest and right since they never had been in possession for well over the statutory period of 12 years. It is also her case that even prior to the filing of the suit on 20.09.1982, the Special Deputy Collector, Hyderabad, called upon Defendants 1, 2, 5 and 6 to file documents and when they submitted all records in their possession, the District Collector, Hyderabad, through his memo No. F4/5125/83 informed them that the lands in their possession were classified as Government lands bearing Town Survey No. 4/1/6 and advised them to seek regularization of the same from the Government and that in the above circumstances, the Plaintiff cannot seek any relief from the Court.

7. Defendant Nos. 2 adopted the written statement filed by the first Defendant.

8. The fourth Defendant, who is the G.P.A. Holder of the third Defendant, filed separate written statement and his case is that the third Defendant had sold the suit schedule property to the mother of the Plaintiff in the year 1965, but

however, the land was uneven with boulders and there was no approach road and, therefore, the father of the Plaintiff expressed his unwillingness to occupy the land and insisted him (fourth Defendant) to provide a better plot instead of the suit schedule property. His further case is that the father of the Plaintiff was interested to take an open plot lying opposite to the suit schedule property, but as it was not free from encumbrances, he could not transfer the same in the name of mother of the Plaintiff as requested by the father of the Plaintiff. It is also his specific case that the father of the Plaintiff had assured him (fourth Defendant) that whenever the land lying opposite to the suit schedule property is given to him, he would occupy the same in lieu of the suit schedule property and in view of the assurance given by the father of the Plaintiff and as the Plaintiff or her mother did not occupy the suit land till 1979 and he had sold the same to Defendants 1 and 2 after informing them about the earlier sale transactions done in favour of mother of the Plaintiff. As far as the other averments of the plaint are concerned, he has denied the knowledge about the same.

9. Defendants 5 and 6 also filed a common memo adopting the written statement filed by Defendants 1 and 2, but however, they filed an additional written statement after obtaining permission from the Court and specifically averred that the suit schedule property, which is bearing Town Survey No. 4/1/6, is Government land but not private land belonging to any party and that the Collector, Hyderabad, had informed them accordingly.

10. Basing on the above pleadings, the Court below framed the following issues for consideration:

1. Whether the Plaintiff is the owner of the suit land by virtue of the Gift Deed dated 13.03.1979 executed by her mother Mrs. G. Anasuya and by virtue of registered sale deed executed by D.3 and Smt. Ahmed Bee dated 19.05.1965 in favour of the mother of the Plaintiff?
2. Whether D.1 and D.2 are bonafide purchasers of the suit schedule plots B and C properties respectively for valuable consideration without notice to the prior sale of the suit land in favour of Donor of the Plaintiff?
3. Whether there is waiver and acquiescence on the part of the Plaintiff in allowing the Defendants 1 and 2 to complete their buildings on their respective plots without any notice of objections?
4. Whether the suit is bad for non-joinder of Sri Tej Narayan said to have been purchased 410 square yards from D.1 and Collector, Hyderabad?
5. Whether the suit is barred by limitation?
6. Whether the Plaintiff is entitled to the relief of declaration of title and delivery of possession and whether, in the alternative, the Plaintiff is entitled to any damages?
7. To what relief.

11. On behalf of the Plaintiff, P.W. 1 -G. Sanjeeva Reddy - father of the Plaintiff, P. Ws.2 -C. Venkat Reddy and P.W. 3 - the mother of the Plaintiff were examined and Exs.A. 1 to A. 17 were marked. On behalf of the Defendants, one Tej Narayan - Defendant No. 5 was examined as D.W.1 and Exs.B.1 to B.19 were marked.

12. Learned Additional Chief Judge, City Civil Court, Hyderabad, on appreciation of oral and documentary evidence available on record, came to the conclusion that the Plaintiffs have proved Ex.A.2 and that P.W. 3 - mother of the Plaintiff became the absolute owner of the land by virtue of Ex.A. 2 registered sale deed and that P.W. 3 has executed a registered Gift Deed in favour of the Plaintiff vide Ex.A.7 and that the contention of the Defendants that the mother of the Plaintiff and subsequently the Plaintiffs were not in possession of the property cannot be accepted in view of the oral and documentary evidence on record in Ex.A.3 to A.6. The learned Judge also came to the conclusion that though the Defendants were informed by the Collector, Hyderabad, vide Exs.B.2 to B.4 that the suit schedule property forms part of the Town Survey Number 4/1/6 in Shaikpet Village and it is classified as Government land, but since the Government did not claim the land as its land in Ex.A. 5 - proceedings of the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, and since no notice was issued to the Plaintiff or her mother claiming the suit schedule property as Government land and since the government did not choose to file any Land Grabbing Case against the Plaintiff or against the Defendants from the year 1983 till the date of the judgment (04.06.1990), it is not open to the Defendants to say that the Government is the owner of the suit schedule property. Learned Judge also held that the Plaintiff has proved her title and that she is entitled for declaration of title and recovery of possession and also for past and present damages and accordingly, decreed the suit in favour of the Plaintiff. Challenging the said judgment and Decree, this appeal has been filed.

Chequered events of the case:

13. Admittedly, after the suit was decreed by the Court below on 04.06.1990, the State of A.P. through the Revenue Divisional Officer, Hyderabad, had filed two Land Grabbing cases in L.G.C. Nos. 31 and 38 of 1991 before the Special Court constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as "Special Court"), claiming Acs.3.16 guntas of land, which includes the suit schedule property, as Government land. Oral and documentary evidence let in. The Special Court held that the Respondents therein and Ors. i.e., Defendants 1 to 5 and Sofia Begum and Ors. are "land grabbers" and allowed both the Land Grabbing Cases by its common order dated 28.07.1993, declaring that the suit schedule property is Government land. Aggrieved by the same, Defendants 1, 2, and 5 approached this Court by filing Writ Petition Nos. 15266, 15268 and 14403 of 1993 seeking a Writ of Certiorari to quash the judgment and the decree dated 28.07.1993 of the Special Court.

14. All the three Writ Petitions were heard together and by a common judgment

dated 14.07.2000, a Division Bench of this Court dismissed all the three writ petitions as withdrawn with certain observations. The said order reads as follows:

Sri Vilas v. Afzal Purkar, Learned Counsel for the Petitioner seeks permission to withdraw the above writ petitions. However, he requested that the Petitioners may be permitted to deposit the amount as ordered by the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad at the rate of Rs. 750/- per square metre in respect of the disputed property within three months from the date and get the land in occupation under regularization. It is always open for the Petitioners to get the lands regularized, if they are entitled. It is submitted that already the first appeal filed by the writ Petitioners in respect of the schedule property against Smt. Prabhavathi, one of the Respondents to the writ petitions is pending. Regarding the deposit of the amount, in view of the pendency of the first appeal, we feel it proper to grant some more time. Accordingly, we grant three months time from this date. As the appeal is pending, it is open for both the parties to work out their remedies in the said appeal. It is also made clear that either the findings given by the Special Court or the observations now made by us shall not come in the way in deciding the first appeal. Withdrawal of these writ petitions or deposit of the amount for regularization shall not come in the way of deciding the rights of the parties and that the Petitioners are at liberty to agitate before the appropriate forum.

With the above observations, these three writ petitions are dismissed as withdrawn. No costs.

15. With this back ground, this appeal came up for consideration before a learned single Judge of this Court and underwent several adjournments. However, learned Single Judge (Hon''ble Sri Justice P.S. Narayana) of this Court, by order dated 23.07.2009, after considering the rival contentions and referring to extracts of the common judgment in the above referred Writ Petitions, felt it appropriate to refer this appeal to a Division Bench and accordingly referred this appeal to a Division Bench and thus, the matter is listed before us.

16. The Appellants, along with this appeal, have filed CCCAMP Nos. 574, 575, 713 to 715 of 2008 seeking various reliefs. CCCAMP No. 574 of 2008 has been filed seeking permission to amend the written statement filed by the first Appellant, to the effect that the State of A.P. filed two Land Grabbing Cases in L.G.C. Nos. 31 and 38 of 1991 against him and other Defendants and that the said cases were decreed and that in pursuance of the said judgment, he paid Rs. 13,24,314/- and that the second Defendant paid Rs. 6,95,178/- to the Government of A.P. and that the judgment of the Special Court is binding.

17. CCCAMP No. 575 of 2008 is filed seeking to receive additional documents in view of the subsequent events after passing of the order by the Court below, which are as follows:

1. Certified copy of the common judgment passed in LGC Nos. 31 and 38 of 1991 by the Special Court dated 28.07.1993;

2. Original Challan bearing No. 8467 dated 27.09.2006 for a sum of Rs. 6,95,178/- and original challans No. 8466 for a sum of Rs. 13,24,314/- dated 27.09.2006.

3. Proceedings No. 11/2452/89, dated 18.09.2006 of the District Collector, Hyderabad.

4. G.O. Ms. No. 529 dated 08.05.2006 of Government of A.P. (Revenue (Assignment-III-I) Department; and

5. Certified copy of the common order passed by the Hon'ble High Court of A.P. in W.P. No. 15266 of 1993, W.P. No. 15268 of 1993 and W.P. No. 14403 of 1998 dated 14.07.2000.

18. CCCAMP No. 713 of 2008 is filed to implead the proposed parties as Respondents 4 to 6, i.e., (i) Government of A.P. rep. by the Secretary to Government, Revenue Department, Secretariat, Hyderabad; (ii) The Collector, Hyderabad District, Hyderabad; and (iii) The Revenue Divisional Officer, Hyderabad Division, Nampally, Hyderabad, to the Appeal. CCCAMP No. 714 of 2008 is filed for dispensing with the issuance of statutory notice u/s 80(2) of CPC and CCCAMP No. 715 of 2008 is filed to receive the documents filed, viz., (1) Gazette Notification dated 06.08.1977; (2) Acknowledgment of receipt of notice u/s 9(2) of Madras Survey and Boundaries Act, 1923; (3) Location sketch; (4) Pahani for the year 1981-82 of Shaikpet Village for Survey No. 403; (5) Extract of TSLR in respect of TS No. 4/1/1/C Ward No. 10 Block D; and (6) Recognized plots of defunct Jubilee Hills Municipality, Shaikpet Village; as additional evidence on behalf of the Petitioners therein.

Contentions:

19. Sri Sunil Bhaskar Ganu, Learned Counsel, appearing for Sri M. Papa Reddy, Learned Counsel for the Appellants, and Sri D. Prakash Reddy, learned senior counsel, appearing for Sri Raghuveer Reddy, Learned Counsel for the Respondents, have made elaborate submissions.

20. The main contention of Sri D. Prakash Reddy, learned senior counsel, appearing for Sri Raghuveer Reddy, Learned Counsel for the Respondents is that the Plaintiffs mother has purchased the suit schedule property vide registered sale deed under Ex.A.2 and that by virtue of the said registered sale deed and since the suit schedule property is vacant land, a presumption has to be drawn that the Plaintiffs mother continued to be in possession of the suit schedule property. It is also his submission that the mother of the Plaintiff got her name mutated in the municipal records and Ex.A.3 and A.4 proves the same. It is also his submission that the father of the Plaintiff filed a declaration under the provisions of A.P. Urban land (Ceiling and Regulation) Act, 1976 and Exs.A.5 and A.6 proves the same and that subsequently, the mother of the Plaintiff has executed Gift Deed in favour of the Plaintiff under Ex.A.7 and all these circumstances go to show that the Plaintiff had been in possession of the suit

schedule property from the date of her purchase till the Defendants illegally occupied the same and that the above referred documentary evidence is sufficient to prove the title of the Plaintiff.

21. The next submission of learned senior counsel is that when the Plaintiff came to know that the Defendants challenged the judgment of the Special Court and that the Government of A.P. was also claiming the suit schedule property, she got impleaded herself as a party to the above referred batch of Writ Petitions and that when the Defendants were intending to withdraw the above referred Writ Petitions, the counsel for the Petitioners therein requested the Court to safeguard the interest of the Plaintiff and in view of the said request, a Division Bench of this Court has made a categorical observation that the findings given by the Special Court and the observations made in the order of the Writ Petitions shall not come in the way of deciding this first appeal. His main submission is that the observations made in the judgment of the above referred writ petitions to which the Plaintiff and the Defendants are parties, and therefore, such observations have binding force and a party to a judgment cannot say that the said observations are obiter dictum or per incuriam. It is also his submission that in the above circumstances, there is no need to receive any additional evidence or add the State of A.P. as a party to the suit and that it is the Plaintiff who is the master of his/her case and it is the prerogative of the Plaintiff to choose the Defendants or claim relief against the chosen Defendants and the Defendants cannot force the Plaintiff to add any party. It is also his submission that once the third Defendant -Smt. Rangamma and Smt. Ahmed Bee have sold the property to the mother of the Plaintiff and thereby they had divested their title and, therefore, they could not have executed any sale deed in favour of Defendants 1 and 2 and they could not have conveyed any right to the Defendants 1 and 2.

22. Per contra, Sri Sunil Bhaskar Ganu, Learned Counsel, appearing for Sri M. Papa Reddy, Learned Counsel for the Appellants submitted that the Plaintiff has to stand or fall on her own legs and she cannot depend upon the weakness in the case of the Defendants. His main submission is that though the Plaintiff claims that her mother's name was mutated in the municipal records in the year 1965 itself by virtue of Exs.A.3 and A.4, but the extracts of the Municipal Assessment Register vide Ex.B.11 and B.14 falsifies the claim of the Plaintiff. It is also his submission that a reading of the entire evidence gives an impression that though the Plaintiffs mother seems to have purchased the suit schedule property in the year 1965, but she was never in possession of the same and the Plaintiff's father was not interested to take the suit schedule property and that he was interested to take an alternative plot and in the above circumstances, the Defendants have purchased the suit schedule property. It is also his submission that the Defendants had thoroughly made enquiries in the municipal office and also obtained Encumbrance Certificates from the Sub-Registrar Office which reveal that the names of the vendors of the Defendants continued in the municipal records and no sales were shown in the Encumbrance Certificates and in the above circumstances, the Defendants purchased the suit schedule property. It is

also his submission that admittedly, the Defendants have constructed their houses and have been residing therein and subsequently got their names mutated in the Municipal Assessment Registers. His main submission is that when the Defendants had taken a specific plea in their written statement that the State of A.P. is the owner of the suit schedule property, the Plaintiffs ought to have added State of A.P. as a party to the suit.

23. Learned Counsel further submitted that the subsequent events have to be taken into consideration which reveals that the claim of the Government of A.P. that the suit schedule property is Government land has been upheld by the Special Court and in view of the same, none of the parties can claim any title to the suit schedule property and that the Plaintiff cannot seek declaration of title. It is also his submission that it is the Defendants who filed the above referred batch of Writ Petitions challenging the judgment of the Special Court constituted under the said Act and they sought permission to withdraw the said Writ Petitions and while dismissing the above referred Writ Petitions, the earlier Division Bench of this Court made some observations and those observations were not made while deciding the matter on merits or deciding any legal issue and, therefore, the observations, which were made casually, cannot be considered as ratio decidendi. It is also his submission that the observations of this Court in the above referred Writ Petitions were made without taking into consideration the rigour of Section 8(6) of the A.P. Land Grabbing (Prohibition) Act, 1982, and, therefore, the observations made in ignorance or forgetfulness of some statutory provisions have to be treated as per incuriam. Learned Counsel, relying on judgments reported in the cases between Nallamilli Satyanarayana Reddy v. Nallamilli Chinna Venkat Reddy 2009 (5) ALD 723 and Ambika Prasad Thakur v. Ram Ekbal Rai AIR 1966 SC 605 , submitted that the Court may, considering the facts and circumstances of the case, can draw either forward or backward presumption. Learned Counsel further submitted that the Plaintiff has not entered into the witness-box and placing reliance on Indian Bank Vs. V.R. Venkataraman and Others, submitted that for non-examination of the Plaintiff, adverse inference has to be drawn against her.

24. Both the Learned Counsel have relied upon several decisions in support of their contentions, which will be referred to in the following paragraphs.

25. In view of the rival claims of both the parties, the points that arise for consideration in this appeal are as follows:

1. Whether the State of A.P. is a necessary party to the suit and whether the suit is liable to be dismissed for non-joinder of a necessary party?
2. Whether subsequent events have to be taken into consideration?
3. Whether additional evidence can be received and, if so, whether the matter has to be remanded to the Court below?
4. Whether the Defendants should be allowed to amend their written statement?

5. Whether the observations made by the Division Bench of this Court by its order dated 14.07.2000 while disposing of the Writ Petition No. 15266 and batch are binding or have to be treated as Obiter Dictum?

6. Whether the Plaintiff is entitled for declaration of her title and consequently for recovery of possession and whether the judgment of the Special Court binds the Plaintiff?

7. To what relief?

Point No. 1:

26. It is the case of the Plaintiff that her mother purchased the suit schedule property from Smt. Rangamma - D3 and Smt. Ahmed Bee through their G.P.A. - T.V. Ramachandraiah - D4, vide Ex.A.2. The first Defendant claims to have purchased "B" schedule property vide registered sale deed dated 21.06.1979 under Ex.B.6 and the second Defendant claims to have purchased "C" schedule property vide registered sale deed dated 26.07.1979 under Ex.B.19 from Smt. Rangamma (D3) and Smt. Ahmed Bee represented through their G.P.A. - T.V. Ramachandraiah (D4). Thus, admittedly, the vendors of the Plaintiff and the vendors of the Defendants 1 and 2 are one and the same persons and they are all claiming their title through one Sofia Begum. Admittedly, Sofia Begum and Smt. Rangamma (D3), T.V. Ramachandraiah (D4), D1 and D5 were parties to the above referred land grabbing cases. The fifth Defendant claims to have purchased 210 square yards of land from the first Defendant vide registered sale deed dated 12.11.1980 vide Ex.B.8. The Plaintiffs case is that her mother, who has purchased the suit schedule property under Ex.A.2, has executed a Gift Deed under Ex.A.7 on 31.03.1979 and gifted the suit schedule property to her. It is also her case that her father has shown the suit schedule property in his declaration filed with Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, and got exemption from the Government under Ex.A.6 in respect of 654.5 square metres of land.

27. Admittedly, the Plaintiffs sale deed is much prior to the sale deed of Defendants 1 and 2. The Plaintiff has been claiming declaration of title and the Government of A.P. is also claiming title to the suit schedule property. So first of all, it has to be decided whether Government is a necessary party or not.

28. Admittedly, the first Defendant had averred in Para 15 of his written statement as follows:

Even prior to the filing of this suit on 20.09.1982, the Special Deputy Collector, Hyderabad, called upon the Defendants 1 and 2 to file documents based on which they were in occupation of the suit lands forming that the lands bore Town Survey No. 4/1/6. The Defendants 1 and 2 and Shri Tej Narain (Purchaser of 410 square yards out of 900 square yards owned by Defendant No. 1) submitted all the record in their possession. Whereupon, the Collector, Hyderabad, through his Memo No. F4/5125/83 informed these Defendants 1 and 2 and Shri Tej Narain

that the lands in their possession were classified as Government lands and advised the three of them to seek regularization of the same for the consideration of the Government. From this, it is established that the very title of the Plaintiff is clouded and absolutely imperfected and illegal. Hence, it is respectfully submitted that the Plaintiff cannot seek any relief from this Court.

29. The fifth and the sixth Defendants, in their additional written statement, had also specifically pleaded that the suit schedule property bearing Town Survey No. 4/1/6 is Government land. They have also specifically pleaded that the Collector, Hyderabad, informed them that the lands in their possession were classified as Government lands. In fact, a specific issue was framed by the Court below as issue No. 4, i.e., whether the suit is bad for non-joinder of Sri Tej Narayan said to have been purchased 410 square yards from the first Defendant and Collector, Hyderabad. Admittedly, Tej Narain and Kiran Narain have been added as fifth and the sixth Defendants respectively by the Court below by its order passed in March, 1986, in I.A. No. 239 of 1985. But the State of A.P. has not been added as a party to the suit. By making a specific plea in the written statement, the Defendants have brought to the notice of the Plaintiff that the Government of A.P. have claimed that the suit schedule property is Government Land. However, when P.W. 1 was cross-examined with regard to the claim of the Government of A.P. and the notice issued by the Government of A.P. that the suit land is Government land, he simply deposed that he does not know if the Collector, Hyderabad, issued such notices to Defendants 1 and 2. His case is that he had not received any such notices. It was also suggested to P. Ws.2 and 3 that the suit schedule property is Government land. D.W.1 had also categorically deposed that the suit schedule property is in Survey No. 403 of Shaikpet Village in Town Survey No. 4/1/6 and that the Collector, Hyderabad, informed them vide Exs.B.2 and B.3 that the suit schedule property is Government land. Thus, there is ample record to show that besides taking a specific plea in written statement by the contesting Defendants, but they gave specific suggestions to the witnesses of the Plaintiff that the Government claimed the suit schedule property as its land. Admittedly, State of A.P. subsequently filed Land Grabbing cases against the Defendants and Sofia Begum. Admittedly, in spite of specific plea taken in the written statement, the Plaintiff has not taken any steps to add Government as a party to the suit. Thus, a cloud had been created with regard to the title of the Plaintiff and, therefore, it was obligatory on the part of the Plaintiff to clear the cloud by adding the State of A.P. as party to the suit. Unfortunately, the Court below also did not consider the importance of this specific plea taken by the contesting Defendants. The Court below observed that after Defendants 1, 2, 5 and 6 submitted their joint petition dated 06.04.1983 and basing on that joint petition, the memos were issued by the Collector, Hyderabad, and that the Defendants themselves invited such an action and that the Government had not issued memos suo motu. Whether the Defendants had themselves invited such an action or the Government of A.P. had suo motu issued those memos is of no consequence because the fact remains that the Government of A.P., by issuing

those memos, had specifically claimed that the suit schedule property as Government land. The Court below also held that this happened subsequent to the filing of the suit.

30. Merely because the Government had not initiated any proceedings nor filed a Land Grabbing Case by then are not sufficient and reasonable grounds to hold that the Government is not a necessary party to the suit.

31. Therefore, we are of the view that the Plaintiff ought to have impleaded the Government as party to the suit. In this context, it is apt to quote Order II Rule 1 Code of Civil Procedure, which reads as follows:

Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

32. Sri D. Prakash Reddy, learned senior counsel, submits that it is the prerogative of the Plaintiff to choose the party and the Defendants cannot dictate terms to the Plaintiff with regard to the framing of the suit. It is true that it is the prerogative of the Plaintiff to claim the relief from the Defendants" chosen by the Plaintiff. But when it is brought to the notice of the Court that there are rival claims, the Court ought to have exercised its discretion under Order 1 Rule 10 (2) CPC and ought to have added State of A.P. as a party to avoid future litigation.

33. Learned Counsel for the Defendants had also relied upon the decision of the Apex Court in the case between Sangamesh Printing Press Vs. Chief Executive Officer, Taluk Development Board, wherein, it was held that when an application to implead a party under Order I Rule 10 CPC has been filed, an appeal should not be disposed of before passing orders in the said application. In that case, though the impleadment application was pending, the High Court disposed of the appeal without passing any orders on the impleading application.

34. In the case between Committee of Management, Ratan Muni Jain Inter College and another Vs. III Additional Civil Judge, Agra and others, a caveat filed by the Petitioners therein was rejected mainly on the ground that the suit was not filed against them and that they were not arrayed as Defendants. The matter was decided against them and the application for amendment was also rejected. The main dispute was whether the committee of management headed by Kamal Kumar Jain is a proper committee of management or the Committee of management headed by Moti Lal Jain. In the above circumstances, it was held as follows:

The theory of dominus litis should not be over stretched in the matter of impleading of parties, because it is the duty of the Court to ensure that if for deciding the real matter in dispute, a person is necessary party, the Court can order such person to be impleaded. Merely because the Plaintiff does not choose to implead a person is not sufficient for rejection of an application for being

impleaded. The provisions of Order 1 Rule 10 (2) CPC are very wide and the powers of the Court are equally extensive. Even without an application to be impleaded as a party, the Court may, at any stage of the proceedings order that the name of any party, who ought to have been joined whether as Plaintiff or Defendant or whose presence before the Court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

35. In the case between Daitari Prasad Naik v. Umakanta Nayak AIR 1971 Ori 44 (V 58 C 15)

, it was held as follows:

The expression "question involved in the suit" in Order 1 Rule 10 (2) CPC need not be confined only to questions as between the parties to the litigation. Third parties are also entitled to be impleaded under the rule, as parties to the suit provided (i) there must be a right to some relief against the party not joined and (ii) the presence of the absentee party should be necessary in order to enable the Court to effectually adjudicate upon and settle all questions involved in the suit. It cannot, therefore, be said a triangular duel is wholly out of the purview of Order 1 Rule 10 Code of Civil Procedure

36. Order I Rule 10 of CPC is as follows: -

10. Suit in name of wrong Plaintiff -

[1].....

[2] Court may strike out or add parties: The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and

that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

37. In the instant case, having regard to the facts and circumstances of the case, particularly the pleadings and suggestions given, the State of A.P. appears to be a necessary party for complete and final decision on the question involved in the suit. Once it is clear that State of A.P. is a necessary party and it was not added as a party in spite of specific plea taken in the written statement filed by Defendants 1 and 2, the suit is liable to be dismissed on the ground of non-joinder of necessary party alone. Anyhow, the Appellants have also filed CCCAMP No. 713 of 2008 to implead State of A.P. and Ors. as Defendants. Even in the absence of the said application, we consider it just and reasonable to add the State of A.P. and Ors. as shown in the said petition as Defendants suo motu, though no relief is claimed by the Plaintiff against them since their presence is

necessary in order to effectively adjudicate upon and settle all questions involved in the suit. Sri D. Prakash Reddy submits that if this appeal is disposed of without taking into consideration the order of the Special Court and without adding State of A.P. as a party, his clients would work out their remedy with the Government. Since the Plaintiff has been claiming title to the suit schedule property and the issue of title cannot be decided in the absence of State of A.P. as a necessary party and without taking into consideration the orders of the Special Court, we are not inclined to accept the argument of Sri D. Prakash Reddy, learned senior counsel.

Point No. 2:

38. Now, it has to be seen whether the subsequent changes such as filing of Land Grabbing Cases by the State of A.P. and the judgment of the said cases holding that the Defendants, i.e., the vendors of the Plaintiffs, are land grabbers can be taken into consideration.

39. It is settled law that subsequent events can also be taken into consideration when such an important issue has been brought to the notice of the Court. The Apex Court, in the case between Pasupuleti Venkateswarlu Vs. The Motor and General Traders, observed that subsequent events can be taken into consideration. In that case, the landlord resolved to start his own business and sought eviction of the tenant under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. The Rent Controller dismissed the petition. The landlord was also unsuccessful in the appeal. However, the High Court, in revision, remanded the case to the lower appellate authority and the lower appellate authority remanded the whole case to the trial Court for fresh disposal after allowing the parties to lead evidence. The landlord again filed revision before the High Court. During the pendency of the proceedings, the landlord came into possession of a shop. Therefore, it was argued that the petition filed by the landlord is no longer maintainable. The issue that came up for consideration is whether the subsequent events could be taken into consideration and the Apex Court, through His Lordship Krishna Iyer, J, held thus:

If a fact arising after the lis has come to Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice - Subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the

Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

40. Admittedly, the suit was decreed on 04.06.1990. Then, the Government of A.P. filed two Land Grabbing cases in LGC Nos. 31 and 38 of 1991 before the Special Court claiming Acs.3.16 guntas of land as Government land. It is not in dispute that the suit schedule property is the part and parcel of this Acs.3.16 guntas of land claimed by the Government. It is also not in dispute that the vendors of the Plaintiffs and Defendants, i.e., Smt. Rangamma - third Defendant and Smt. Ahmed Bee are the parties to the Land Grabbing proceedings. Even Sofia Begum, from whom Smt. Rangamma and Smt. Ahmed Bee claimed their title, is also made as a party to the Land Grabbing proceedings. Thus, the persons through whom the Plaintiffs and Defendants are claiming rights and title are parties to the Land Grabbing Cases. Admittedly, both the Land Grabbing Cases were allowed by the Special Court, by its order dated 28.07.1993 holding that the suit schedule property is Government land. Admittedly, the first, second and the fifth Defendants have filed Writ Petitions before this Court in W.P. Nos. 15266, 15268 and 14403 of 1993 respectively challenging the order passed by the Special Court. It is also not in dispute that the Plaintiff got herself impleaded as Respondent No. 3 in all the above writ petitions on 27.11.1996. It is also not in dispute that the above said writ petitions have been dismissed as withdrawn by a Division Bench of this Court by order dated 14.07.2000. Thus, the judgment of the Land Grabbing Court has become final. The Plaintiff, by getting herself impleaded in the above said Writ Petitions, has become the party to the Land Grabbing Cases.

41. In view of the settled legal position that subsequent events can be taken into consideration, we consider it appropriate to take into consideration the subsequent developments such as filing of land grabbing cases and common order passed by the Special Court in L.G.C. Nos. 31 and 38 of 1991 dated 28.07.1993.

Point No. 3:

42. The next question that arises for consideration is whether the matter has to be remanded back to the Court below in view of adding the Government of A.P. and its officials as the Defendants to the suit.

43. It is not in dispute that, the appellate Court may receive additional evidence to enable it to pronounce judgment or for any other substantial cause under Order XLI Rule 27(1)(b) Code of Civil Procedure

44. Order XLI Rule 28 CPC is as follows:

28. Mode of taking additional evidence: wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court,

to take such evidence and to send it when taken to the Appellate Court.

45. From the above provision, it is clear that the appellate Court can take evidence. As far as the judgment and decree passed by the Special Court is concerned, it is not in dispute that the same has become final. Admittedly, the suit schedule property is a part and parcel of the petition schedule property in L.G.C. No. 31 of 1991 and the issue of title between the State of A.P. and Defendants 1 to 5, and Sofia Begum and Ors. has been decided in that case. Admittedly, Plaintiffs and Defendants 1 to 5 are claiming their title through Sofia Begum, who is also declared as a land grabber in the said land grabbing case. Now, we are of the view that if the judgment of the Special Court is marked as exhibit, the purpose would be served. Accordingly, the common judgment dated 28.07.1993 passed in LGC Nos. 31 and 38 of 1991 by the Special Court is hereby marked as Ex.X. 1. It is not the case of the Plaintiff that she has any other oral or documentary evidence to be adduced on her behalf. No such application or arguments have been advanced. It has to be seen that when the Defendants filed certain documents requesting to receive as additional evidence including the judgment of the Special Court, the Plaintiff did not file any other documents. Since no additional evidence is sought to be adduced by the Plaintiff, we are of the view that this appeal can be disposed of by us without remanding the same to the Court below.

46. Though initially we thought of remanding the matter to the Court below for fresh disposal, but in view of the question raised as to the binding nature of the observations of the earlier Division Bench of this Court and in view of the circumstance that no subordinate Court can express any view about the same, we are not inclined to remand the matter to the Court below and feel it appropriate to decide the issue in this appeal itself. In fact, the very purpose of referring this matter to the Division Bench is to decide whether observations of the Division Bench of this Court have any binding force or not.

47. Since we are of the view that re-trial is not necessary, there is no need to remand the case to the Court below.

48. Order XLI Rule 24 is as follows:

24. Where evidence on record sufficient Appellate Court may determine case finally: Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

49. After receiving the order copy of the Special Court in land grabbing cases, since no other additional evidence is required and the evidence on record is sufficient to determine the case, we feel that the issue in controversy can be decided in this appeal itself.

Point No. 4:

50. Learned Counsel for the Defendants, relying upon the judgment of the Apex Court in the case between Pandit Ishwardas Vs. State of Madhya Pradesh and Others, submitted that amendment of pleadings can be allowed at any stage and even at the appeal stage and that there is no impediment or bar against an appellate Court permitting amendment of pleadings so as to enable a party raise a new plea.

51. Learned Counsel has also relied upon the judgment of the Apex Court in the case between Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, wherein, it was held as follows:

If circumstances change, they can form the subject of some other proceedings but need not ordinarily be considered in the appeal. To this proposition, there are few exceptions. Sometimes it happens that the original relief claimed becomes inappropriate, or the law changes affecting the rights of the parties. In such cases courts may allow an amendment pleading the changed circumstances. Sometimes also the changed circumstances shorten the litigation and then to avoid circuity of action the Courts allow an amendment.

52. In the same case, after referring to several decisions, it was further observed that "taking of subsequent events into account has been approved by several decisions."

53. In the instant case, since the Plaintiff herself became a party to the batch of writ petitions filed challenging the order of the Special Court in Land Grabbing Cases and in view of receiving of the copy of judgment of the Special Court as Ex. 1, we are of the view that there is no need to allow the Defendants to amend their pleadings.

Point No. 5:

54. The main contention of Sri D. Prakash Reddy is that when the Defendants wanted to withdraw the above referred writ petitions filed by them and requested this Court to grant some time for depositing the amount at the rate of Rs. 750/- per square metre of land, the Plaintiff raised objection and that this Court, in order to protect the interest of the parties, made an observation that the findings given by the Special Court or the observations made by the Division Bench of this Court shall not come in the way of deciding this first appeal. Thus, his main submission is that when once this Court has categorically held that the findings given by the Special Court shall not come in the way of deciding this appeal, the judgment of the Special Court cannot be taken into consideration and the rights of the parties to the present lis cannot be decided basing on the observations made by the Special Court. Learned Counsel 's main contention is that as the Plaintiffs and the Defendants were parties to the above referred writ petitions and, therefore, they are bound by the observations of this Court. It is also his submission that a party to the judgment cannot say that the said judgment is

obiter dictum and if allowed to say so, then there is no end to the litigation and a judgment-debtor, who suffered a decree, by referring to any of the statutory provisions, may say that since the judgment does not refer to a particular provision of law, the said judgment is obiter dictum. His main submission is that where a judgment is cited as precedent, then only it becomes necessary to see whether any ratio has been laid down or not and whether cited judgment has to be treated as obiter dictum.

55. Sri Sunil Bhaskar Ganu submitted that the observations were made while permitting withdrawal of the above referred writ petitions and since neither there was any decision was on merits of the case nor any issue was decided, the said observations cannot be confirmed as a precedent or a ratio decidendi. In support of his contention, he has relied upon several decisions.

56. In the case between Oriental Insurance Company Ltd., v. Rajkumari and Ors. 10 2008 (1) ALD 109, it was held as follows:

A decision is precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason, it is important to analyze a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contains three basic postulates [1] findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; [ii] statements of the principles of law applicable to the legal problems disclosed by the facts; and [iii] judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent.

57. It is also submission of Sri Sunil Bhaskar Ganu that where a decision has been made on merits deciding the issues involved in the case and rights of the parties, such decision binds the parties as res Judicata in future litigation.

58. In the case between Dadu Dayalu Mahasabha, Jaipur (Trust) Vs. Mahant Ram Niwas and Another, a suit for injunction was filed. The trial Court held that the Plaintiff was not in possession of the suit property as on the date of the filing of the suit. The appellate Court confirmed the judgment of the trial Court. However, the High Court reversed the said finding. Then the matter was carried to the Apex Court. Having regard to the circumstances, the Apex Court held as follows:

Special Leave granted. The appeal is heard.

Since the High Court has not and could not have in the circumstances of the case reversed the finding of the trial Court and the First Appellate court that the

Plaintiff was not in possession of the suit property on the date of the filing of the suit, it could not have reversed the decree passed by the first appellate Court and made a decree for injunction for which suit has been brought.

We therefore, set aside the judgment and decree of the High Court and restore the judgment and decree of the First Appellate Court. This judgment will not come in the way of the Plaintiff/Respondent filing a suit for possession, if he is so advised.

59. Taking advantage of the observation "this judgment will not come in the way of the Plaintiff/ Respondent in filing a suit for possession, if he is so advised", the second round of litigation started and a suit was filed for recovery of possession. The trial Court held that the suit was barred by principles of res judicata. The Respondent preferred an appeal. The First Appellate Court reversed the judgment and decree of the trial Court and held that in view of the observation of the Apex Court in the earlier round of litigation, neither the principles of res judicata nor Order II Rule 2 CPC were applicable. Then the matter was carried to the High Court and the High Court allowed the appeal holding that the order of the Apex Court has to be read in its entirety. It was also held that once ordered, a judgment will not come in the way of suit for possession and the suit for possession cannot be dismissed on the basis of previous judgment in a suit for injunction. When the matter was carried to the Apex Court, the Apex Court considered several judgments of the Privy Council and held that the earlier observations made by the Apex Court, i.e, "the judgment will not come in the way of the Plaintiff/Respondent in filing a suit for possession, if he is so advised" are of no consequence and the said observations, though made in proceedings inter-parties in the earlier litigation, would not entitle the Plaintiff to file a fresh suit for possession, as such observations were held to be barred under the principles of res judicata.

60. The above referred decisions of the Apex Court, in our view, squarely apply to the case on hand.

61. In case between Shan Zahoor Vs. Vijayawada Municipal Corporation, this Court, in its elaborate judgment, held as follows:

A judgment of a Court operates as precedent only for what it decides, known as ratio decidendi and not for its general or casual observations, called obiter dicta. However, discerning or culling out the ratio decidendi of judgment is by no means a simple or easy task. Many a time, it would be difficult to state, with a semblance precision as to which portion of the judgment represents the ratio decidendi and which, the obiter dicta. The angle from which a precedent is examined makes a substantial difference. In the process of answering the main issue or dealing with the core of the dispute, passing observations are bound to be made by the Court, here and there. Once the central issue is involved in the case is identified, the view expressed by the Court on that issue deserves to be treated as ratio decidendi. The observations in the process of reasoning, or

disposal of inconsequential and subsidiary issues, fall into the category of obiter dicta. Where, the ultimate conclusions are summed up at the end of the precedent; the Court before, which it is cited, is relieved of the difficulty in this regard. 62. In the case between Oriental Insurance Company Ltd., v. Raj Kumari and Ors. 13 2008 (1) ALD 109 (SC), the Apex Court observed as follows:-

According to the well-settled theory of precedents, every decision contains three basic postulates (i) finding of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) Judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before the Court has been decided is alone binding as a precedent.

63. In the case between V. Kishan Rao v. Nikhil Super Specialty Hospital 2010 (5) ALD 46 (SC), the Apex Court held as follows:

When a judgment is rendered by ignoring the provisions of the governing statute and earlier larger Bench decision on the point such decisions are rendered "per incuriam". This concept of "Per incuriam" has been explained in many decisions of this Court. "Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned so that in such cases, some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

64. Section 8(6) of the A.P. Land Grabbing (Prohibition) Act, 1982, reads as under:

(6) 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

[Provided that the Special Court shall, by notification specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Court from any person including the custodian of evacuee property within the period specified therein will be considered by it;

Provided further that where the custodian of evacuee property objects to the Special Court taking cognizance of the case, the Special Court shall not proceed further with the case in regard to such property;

Provided also 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.

65. It appears that the rigour of Sub-Section 6 of Section 8 of the A.P. Land Grabbing (Prohibition) Act, 1982, was not brought to the notice of the earlier Division Bench and, therefore, it was not considered by the earlier Division Bench. Had that provision was brought to the notice of their Lordships", the earlier Division Bench, in our considered view, would not have made such observations.

66. The Apex Court, in the case between Government of A.P. v. B. Satyanarayana Rao (dead) by LRs 2000 (4) SCC 536, observed as follows:

per incuriam" are those decisions given in Ignorance or forgetfulness of some inconsistent statutory provisions or of some authority binding on the Court concerned i.e. previous decisions of the Court i.e. its own Court or by a Court of co-ordinate or higher jurisdiction or in ignorance of a term of a statute or by a rule having the force of law

67. Section 8(6) of the Land Grabbing Act specifically envisages that the findings of the Special Court with regard to the alleged act of Land Grabbing shall be conclusive proof 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 such persons having interest in such land whether or not such persons are parties before the Special Court.

68. In view of the above referred specific provision, the observation of the Division Bench of this Court in the above referred writ petitions that the findings given by the Special Court shall not come in the way of deciding the first appeal cannot have a binding force. What would be the binding is the ratio of the decision and when such a decision is arrived upon entering into the merits of the issues involved in the case. Admittedly, the judgment of the Division Bench of this Court was not on merits. It has not decided any disputed issue or any legal point. It was an occasion when the Defendants herein who filed the above referred writ petitions challenging the order of the Special Court had proposed to withdraw the writ petitions and sought permission to deposit amount as ordered by the Special Court. Considering their request, this Court said that it is always open to the Petitioners therein (Defendants herein) to get the land regularized if they are entitled to and then granted three months time from the date of order. Thus, it is clear that the Division Bench never intended to set aside the order of the Special Court nor it can be presumed that the judgment stands cancelled. When it was brought to the notice of the Division Bench that the present appeal is arising out of the civil suit which is pending between the parties, it was observed as follows:

...to work out their remedies in the said appeal. It is also made clear that either

the findings given by the Special Court or the observations now made by us shall not come in the way in deciding the first appeal. Withdrawal of these writ petitions or deposit of the amount for regularization shall not come in the way of deciding the rights of the parties and that the Petitioners are at liberty to agitate before the appropriate forum.

69. In *Dadu Dayalu Mahasabha, Jaipur* (Trusty's case (5 supra), the Apex Court observed as follows:

The judgment of the Court, it is trite, should not be interpreted as a statute. The meaning of the words used in a judgment must be found out on the backdrop of the act of each case. The Court while passing a judgment cannot take away the right of the successful party indirectly which it cannot do directly. An observation made by a superior Court is not binding. What would be binding is the ratio of the decision. Such a decision must be arrived at upon entering into the merit of the issues involved in the case.

70. The settled legal position is that where the findings are against the statutory provisions of law or decisions of a superior Court, then, such observations have to be treated as "per incuriam" and "obiter", particularly when such observations affect the rights of the parties. Though a judgment may be between the parties, but when a decision has been given in ignorance of terms of a statute or a rule having the force of law, effecting the rights of the parties, such decision has to be treated as "Per incuriam". However, when a decision has been given on merits, then the same operates as *Res judicata* between the parties. It appears that the observation or declaration made without application of mind and without supported by any reasons cannot be deemed to be making a declaration of law. Similarly, a point disposed of on concession cannot be treated as *res judicata*.

71. Therefore, we are of the view that the observations of the earlier Division Bench of this Court have no binding force and cannot be treated as ratio decidendi and they have to be declared as per incuriam.

Point No. 6:

72. Reliance is also placed on the judgment in the case between *K. Venkatasubba Reddy Vs. Bairagi Ramaiah* (died) by LRs., and *Sajana Granites, Madras* and *Another Vs. Manduva Srinivasa Rao and Others*, wherein, it was held that the Plaintiff has to succeed on the strength of his own title by adducing satisfactory evidence and he cannot succeed on the weakness of the Defendants case.

73. It has to be seen that P.W. 1 admitted that no survey number has been mentioned in Ex.A.2 sale deed. It is surprising to note that house number has been assigned to the vacant land and the same is assessed to the municipal taxes. Normally, in case of a sale of an open plot, plot numbers in the lay out and survey number of the land will be mentioned. It gives an opportunity to the registering authorities to verify whether the Government has issued them any instructions or not to register those lands. The Plaintiff has mainly relied on

Ex.A.2, A.3 and A.4. Ex.A.3 and A.4 show that the name of the mother of the Plaintiff was mutated in the municipal assessment register by 30.07.1965. However, the assessment extracts in Exs. B.11 to B.14 clearly go to show that the names of vendors of Defendants 1 and 2 and subsequently, names of Defendants 1, 2, 5 and 6 were shown in the municipal assessment registers. If at all the name of the mother of the Plaintiff had been mutated in the municipal tax assessment register, the Municipal Corporation would not have issued Exs.B.11 to B.14. However, admittedly, Ex.A.2 is much prior to the sale deed in favour of Defendants 1 and 2. Sri D. Prakash Reddy is right in saying that after selling the property vide Ex.A.2 to the mother of the Plaintiff, her vendors had divested their title and, therefore, they cannot convey better title to Defendants 1 and 2 and consequently, Defendant No. 1 to Defendants 5 and 6. It appears that since there is no change in the name in municipal records and thus, Exs.A.3 and A.4 cannot be relied upon without corroborating evidence. P.W. 1 himself admitted that the Plaintiff did not receive any notice for payment of property tax in respect of the suit schedule property. Admittedly, the Plaintiff did not file any property tax receipts.

74. When the plot was assessed to municipal tax and when the name of the Plaintiff, according to the Plaintiff, has been entered in the municipal assessment register, it is not clarified as to why no property tax was paid. P.W. 1 admitted that he has not kept any watchman at the suit schedule property between 1965 and 1979. P.W. 1 tried to assert their possession by saying that the Plaintiff has constructed temporary compound wall around the plot with stones, but he himself admitted that he does not remember whether it is mentioned in the plaint that after purchasing the plot, any compound wall was erected around the suit schedule property. Thus, in the absence of any specific plea, the contention of the Plaintiff that she had constructed a compound wall around the suit schedule property cannot be accepted. The Plaintiff has mainly relied upon the declaration filed before the Urban Land Ceiling authorities and the exemption granted by the Government. Those documents simply go to show that Sri G. Sanjeeva Reddy - the father of the Plaintiff filed declaration showing the suit land as vacant land in his declaration and that enquiry revealed that he was holding those lands and that the Government of A.P. exempted 654.5 square metres of land from the provisions of Chapter III of The Land Ceiling Act. Admittedly, the legal notice issued on behalf of the Plaintiff itself under Ex.A.8 shows that the Defendants had already constructed houses in the suit schedule property. According to P.W. 1, in June 1981, he found that Defendants 1 and 2 were in illegal possession of the suit schedule property. Therefore, considering the above referred facts and circumstances of the case, we are of the view that it is difficult to hold that the Plaintiffs had been in continuous possession of the property from the date of her purchase and in the circumstances, it is not possible to draw any presumption that the Plaintiffs continued to be in possession of the suit schedule property till she had lost her possession. Anyhow, this issue as to whether the Plaintiff has title to the suit schedule property or whether she had been in

possession of the suit schedule property or whether the Defendants are the bonafide purchasers of the suit schedule property for a valuable consideration without the notice of prior purchase by the Plaintiff have lost their importance in view of the subsequent developments, i.e., judgment of the Special Court.

75. In view of the sequential land grabbing, it appears that the Collectors were directed by the Government to furnish a list of survey numbers of the lands which are classified as Government lands to all the Sub-Registrars and they were directed not to register such lands. of course, it is not clear whether any such circular was in force on the date of registration of Ex. A.2 or Ex.B.1 and B.2. In fact, if there is effective coordination between the Officials of the Registration Department, Land Revenue, HMDA (Municipal) and Survey, Settlement and Land Records, the attempts of unscrupulous land grabbers in selling the Government land showing such land as private lands and cheating innocent persons can be prevented. Whenever a sale deed is presented for registration, the matter should be brought to the notice of the above referred officials and when it is clear from the records that the land which is sought to be registered is not a Government land but private land or not preserved for community purpose, then only the registrars should register such documents. It is always better if objections are called for by issuing public notice or by publishing a notice in any daily newspaper calling upon for objections at the cost of the persons who are seeking registration to avoid future litigations. In this background, it assumes importance that Ex.A.2, admittedly, does not show survey number. P.W. 1 himself admitted that in Ex.A.2, survey number is not given. Normally, a purchaser would make an enquiry as to whether his vendor has got clear title or not before purchasing the property. When survey number is given, the purchaser would have an opportunity to ascertain from the concerned Tahsil Office and to know as to the title-holder of the land. P.W.1, who was as a Minister in Government of Andhra Pradesh from the year 1968 to 1971, deposed that he had not: verified from the village records with regard to the title of the suit schedule property prior to purchase in the name of his wife, but however, he denied a suggestion that the suit schedule property is Government land. He further admitted that no public notice was given before purchase of the suit schedule property in the year 1965.

76. Admittedly, when the other Defendants suffered a decree from the Special Court and when they have filed writ petitions before this Court and when the Plaintiff got herself impleaded in the above referred writ petitions, she has also became a party to the land grabbing proceedings. It has to be seen that admittedly, the Plaintiff was not in possession of the suit schedule property as on the date of filing of Land Grabbing case by the Government. It appears that since the Plaintiff was not in possession of the suit schedule property, she was not made as party to the Land Grabbing Case. But this does not mean that the Plaintiff has no knowledge about the claim of the Government that the suit schedule property is Government land. In view of the specific plea taken by the Defendants 1, 2, 5 and 6 in their written statements and in view of the suggestions given to Sri G. Sanjeeva Reddy, P.W. 1 and P.W. 2, it is clear that the

Plaintiff was put on notice about the claim of the Government of A.P. over the suit schedule property. In this background, the Plaintiff cannot say that she has no knowledge about the Land Grabbing Proceedings and she is not bound by the judgment of the Special Court.

77. It has to be seen that the definition of the Land Grabber includes not only the persons or group of persons who commits land grabbing but also includes the successors in interest. Here, it is apt to quote Sub-Section 2 of Section 8 of the A.P. Land Grabbing (Prohibition) Act, 1982, which reads thus:

(2) Notwithstanding anything in the Code of Civil Procedure, 1908, (the Code of Criminal Procedure, 1973) or in the Andhra Pradesh Civil Courts Act, 1972, any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land grabbed under this act, shall be triable only in a Special Court constituted for the area in which the land grabbed is situated, and the decision of the Special Court shall be final.

[emphasis supplied]

78. Section 8(6) of the A.P. Land Grabbing (Prohibition) Act, 1982, reads as under:

(6) 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 whether or not such persons are parties before the Special Court.

[emphasis supplied]

79. By Andhra Pradesh Act 16 of 1987 with effect from 18.09.1986, in Sub-section (6) the words whether or not such persons and parties before the Special Court" were omitted and the following provisos were added:

Provided that the Special Court shall, by notification specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Court from any person including the custodian of evacuee property within the period specified therein will be considered by it;

Provided further that where the custodian of evacuee property objects to the Special Court taking cognizance of the case, the Special Court shall not proceed further with the case in regard to such property;

Provided also 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.

80. Sub-Section 8 of Section 8 of the A.P. Land Grabbing (Prohibition) Act, 1982, reads as under:

(8) Any case, pending before any Court or other authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of such Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court as if the cause of action on which such suit or proceeding is based and arisen after the constitution of the Special Court.

81. Learned Counsel Learned Counsel for the Appellants had relied upon the judgment of a Division Bench of this Court in the case between K. Sudershan Reddy and Others Vs. The Special Court under A.P. Land Grabbing (Prohibition) Act and Others, In that case, the writ Petitioners claimed to be purchasers under agreement of sales or unregistered sale deeds from the vendors, the daughters of brother of Sibgatullah, but were not tracing their claims either through Sibgatullah through whom Respondents 4 to 9 were making their claim in the Land Grabbing Case or through the Respondents therein. No prior notice and earlier knowledge of the Land Grabbing Case before 04.06.2003 was alleged or probablised against them who were not parties to the L.G.C. No. 166 of 1999. It was also observed that the conflicting claims of the Petitioners and Respondents 4 to 9 touch upon the title and possession of the subject property to determine, which the Court should necessarily go into the realm of facts which ordinarily and normally will not be done in exercise of extraordinary original jurisdiction of this Court in a writ. In the circumstances, it was held as follows:

....that if Section 8(6), Section 7-A(4) of the Act were to be considered as having universal unexceptional application to every person having interest in such land, the same runs counter to the basic principle of natural justice that nobody shall be condemned unheard which is the foundation of the rule of law.

82. Then, this Court, in the same judgment, considered the binding nature of Sub-Section 6 of Section 8 of the Land Grabbing Act and held as follows:

The findings of the Special Court about the fact of land grabbing and of the persons who committed such land grabbing being made conclusive proof, leaves untouched any rights of third parties to tide or ownership or possession of the subject land or the right to pursue legal remedies regarding the same subject, of course, to the disadvantage of the conclusive presumption, but binding nature of the determination of title or ownership or lawful possession of the subject land by the judgment of the Special Court can only be in respect of (a) the parties before the Special Court or (b) persons known or believed to be interested or likely to be interested in the land to whom notices under the third proviso to Section 8(6) were duly served or can be deemed to have been duly served or (c) persons who are successors-in-interest to or claiming through land grabbers or parties before the Special Court or (d) persons who had notice to the notification in the Andhra Pradesh Gazette under the first proviso to Section 8(6) and Rule 7

but did not avail the opportunity of filing objections or (e) persons who had knowledge of proceedings before the Special Court/Special Tribunal otherwise but allowed the proceedings to conclude in their absence.

83. In the instant case, admittedly, the Plaintiffs are claiming their title through Smt. Rangamma - third Defendant and Smt. Ahmed Bee as the Plaintiff purchased the property from their GPA holder -T.V. Ramachandraiah - the fourth Defendant. All these persons are parties to the above referred Land Grabbing cases filed by the Government. Therefore, the Plaintiff comes within the scope of persons who are successors in interest or claiming through land grabbers" who are parties before the Special Court. Therefore, the rigour of Section 8(6) of the Land Grabbing Act binds the Plaintiff. Moreover, in this case, from the date of filing of written statement by the first Defendant, the Plaintiff knows about the claim of the Government of A.P. that the suit land is Government land.

84. As can be seen from the recitals of Ex.X. 1 -the common judgment dated 28.07.1993 of the Special Court, it is clear that the Special Court has categorically held that the suit schedule property is Government Land. It was also held that the claim of the Respondents therein that the land was assigned in favour of Sofia Begum was not true and the said claim was without lawful entitlement. There is no need to refer to the order of the Special Court in detail, but a reading of the said judgment reveals that that several documents and Land Survey records were taken into consideration and a detailed judgment was passed by the Special Court.

85. In view of the clear findings of the Special Court that the suit schedule property is Government land, we are of the view that the question of holding either the Plaintiffs or Defendants as titleholders of the suit schedule property does not arise. Both the Plaintiffs and the Defendants cannot claim any title over the suit schedule property. It would be a futile exercise to say as to who were in actual possession of the suit schedule property and who ousted whom and when and who has better title.

Point No. 7:

86. In view of the above discussion and for the foregoing reasons, CCCAMP No. 574 of 2008 stands dismissed as there is no need to permit the Appellants to amend their written statement. As far as CCCAMP No. 575 of 2008 is concerned, we feel it just and reasonable to receive the certified copy of the common order dated 28.07.1993 passed in LGC Nos. 31 and 38 of 1991 by the Special Court and, therefore, the same is allowed in part. In view of the discussion that the Government is a necessary party to the suit, we allow CCCAMP No. 713 of 2008. CCCAMP No. 714 of 2008 is ordered. In view of the marking of the common order dated 28.07.1993 passed in LGC Nos. 31 and 38 of 1991 by the Special Court as Ex.X.1, there is no need to receive the documents filed in CCCAMP No. 715 of 2008, which is, accordingly, dismissed.

87. Having regard to the facts and circumstances of the case, we have allowed

the impleading petition being CCCAMP No. 713 of 2008, but since we feel that it is appropriate to add State of A.P. and its officials as a party suo motu, we direct the High Court Registry to make necessary amendments in the cause-title of appeal and the plaint and consequentially decree be passed in this appeal. As we have already held that except relying on the judgment of the Special Court no further evidence is required, there is no need to give notices to the proposed impleading parties, i.e., the State of A.P. represented by its officers at this stage, more so, since no adverse orders have been passed against them. Suffice to say that the High Court Registry shall send the copies of this judgment to the newly added parties.

88. The High Court Registry is directed to prepare a decree as per the above directions by adding Respondents 4 to 6 in CCCAMP No. 713 of 2008, i.e., (i) Government of A.P. rep. by the Secretary to Government, Revenue Department, Secretariat, Hyderabad; (ii) The Collector, Hyderabad District, Hyderabad; and (iii) The Revenue Divisional Officer, Hyderabad Division, Nampally, Hyderabad, as Respondents to this appeal and consequentially as Defendants in the suit.

Result:

89. In the result, the City Civil Court Appeal is allowed. Consequently, the suit filed by the Plaintiff in O.S. No. 335 of 2003 on the file of the Additional Chief Judge, City Civil Court, Hyderabad (Temp), stands dismissed. However, in the circumstances, no costs.