

(2009) 04 SC CK 0097

In the Supreme Court Of India

Case No : Civil Appeal No. 2564 of 2009 (Arising out of SLP (Civil) No. 7508 of 2008)

Om Prakash Singh

APPELLANT

Vs

M. Lingamaiah and Others

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 10, 15, 17A, 2, 3
Civil Procedure Code, 1908 (CPC) — Section 9
Criminal Procedure Code, 1973 (CrPC) — Section 260, 262, 263, 264, 265
Specific Rel

Citation : AIR 2009 SC 3091 : (2009) AIRSCW 4976 : (2009) 3 ALT 51 : (2009) 6 JT 116 : (2009) 6 SCALE 267 : (2009) 12 SCC 613 : (2009) 6 SCR 333

Hon'ble Judges : S. B. Sinha, J;Mukundakam Sharma, J

Bench : Division Bench

Advocate : C. Hanumanth Rao, Bina Madhavan, for Lawyer's Knit and Co, for the Appellant; P.S. Narasimha L. Roshmani, for Somiran Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Leave granted.

2. Application of the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short "the Act") is involved in this appeal.

3. It arises out of the following factual matrix.

One Ram Katin Singh was the owner of a land measuring 16 acres, 30 guntas situate in Feerzadiguda Village, Ranga Reddy District in the State of Andhra Pradesh. Appellant claims that it was a joint family property. There exists a dispute as regards date of death of Ram Katin Singh. Whereas, according to the appellant, he died issueless on 22.02.1978, the respondents contend that he expired in 1992.

4. Appellant indisputably is a resident of Uttar Pradesh. The suit land is fallow. Respondents allegedly taking advantage of the death of Ram Katin Singh fabricated three fraudulent sale deeds dated 4.03.1980, 6.03.1980 and 17.03.1981 impersonating the said Ram Katin Singh. Respondents contend that Ram Katin Singh was the exclusive owner of the property and transferred his right, title and interest in favour of the respondent No. 1 herein by reason of the aforementioned deeds of sale. Respondent No. 1, in turn, transferred his right, title and interest by executing deeds of sale in favour of several persons. Respondents denied and disputed that the transactions entered into by and between Ram Katin Singh and the respondent No. 1, on the one hand, and the latter and the respondent Nos. 2 to 6, on the other, were bogus, sham or illegal transactions as alleged or at all.

5. Appellant filed an application before the Special Court constituted under the Act on or about 16.02.2002. It was marked as L.G.C. SR No. 442 of 2002. The Special Court by reason of an order dated 4.11.2003 dismissed the said application opining that the only question as to whether Ram Katin Singh was alive on the date of execution of the said deeds of sale in the year 1980, by itself, cannot be determined as foundational fact necessary for initiating a proceeding before it in absence of requisite pleadings.

6. Aggrieved thereby and dissatisfied therewith, the appellant filed a writ application before the High Court of Judicature at Andhra Pradesh, which by reason of the impugned judgment dated 13.12.2007 has been dismissed.

7. Mr. G. Hanumanth Rao, learned Counsel appearing on behalf of the appellant would contend:

(i) The Special Court and consequently the High Court committed a serious error in passing the impugned judgment insofar as they failed to take into consideration that the Special Court had the jurisdiction to go into the question of title by and between the parties.

(ii) Appellant having pleaded the factum of land grabbing in the concise statement annexed to the application, it was obligatory on the part of the Special Court to determine the said issue.

8. Mr. P.S. Narasimha, learned senior counsel appearing on behalf of the respondents, on the other hand, would support the impugned judgment.

9. Before advertng to the core question, we may notice some salient features of the Act.

The Government of Andhra Pradesh noticed 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 (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private persons) as also the fact that the land grabbers are forming bogus co-operative housing societies or setting up fictitious claims and

indulging in large scale and unprecedented and fraudulent sales of lands through unscrupulous real estate dealers or otherwise in favour of certain sections of the people resulting in large accumulation of unaccounted wealth and as thereby public order was also adversely affected now and then by such unlawful activities of land grabbers in the State in respect of urban and urbanisable land.

The Act was enacted with a view to prohibiting the activities of land grabbing in the State of Andhra Pradesh and to provide for matters connected therewith. The Act is a Special Act. It is a self-contained Code. 'Land Grabber' is defined in Section 2(d) of the Act to mean 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 unauthorized 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 of any of the above mentioned acts; and also includes the successors in interest.

'Land grabbing' has been defined in Section 2(e) to mean:

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 licence agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such land 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.

Section 3 declares 'land grabbing' in any form to be unlawful and any activity connected therewith to be an offence punishable under the Act. Section 4 imposes prohibition on land grabbing, violation whereof results in penal action(s) as specified therein. Section 7 provides for constitution of Special Courts. The Chairman of the Special Court is a sitting or retired Judge of the High Court and out of other four members thereof, two ought to be sitting or retired District Judges (Judicial members) and the other two who hold or have held a post not below the rank of a District Collector. The process for appointment of the Chairman and Members of the Judicial Members of the special court has been laid down in the Act.

The Special Court has been empowered to make regulations relating to the procedures to be followed for the conduct of cases as also the manner of taking decisions. Sub-section (5D) of Section 7 reads as under:

5(D)(i) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Special Court may follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play and subject to the other provisions of this Act and of any rules made thereunder while deciding the Civil

liability.

(ii) Notwithstanding anything contained in Section 260 or Section 262 of the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be tried in a summary way and the provisions of Sections 263 to 265 (both inclusive) of the said Code shall, as far as may be apply to such trial.

(iii) When a person is convicted of an offence of land grabbing attended by criminal force or show of force or by criminal intimidation, and it appears to the Special Court that, by such force or show of force or intimidation the land of any person has been grabbed, the Special Court may if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property.

Section 7A of the Act provides for the powers of the Special Tribunal, Sub-section (1) whereof reads as under:

7-A. "Special Tribunals and its powers etc:--(1) Every Special Tribunal shall have power to try all cases not taken cognizance of by the Special court relating to any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of the land grabbed whether before or after the commencement of the Andhra Pradesh Land Grabbing (Prohibition)(Amendment) Act, 1987 and brought before it and pass such orders (including orders by way of interim directions) as it deems fit.

Provided that if, in the opinion of the Special Tribunal, any case brought before it is prima facie frivolous or vexatious, it shall reject the same without any further enquiry;

Provided further that if in the opinion of the Special Tribunal any case brought before it is a fit case to be tried by the Special court it may for reasons to be recorded by it transfer the case to the Special Court for its decision in the matter.

The first proviso appended thereto empowers the Special Court to reject a case brought before it without any further enquiry, if prima facie appears to be frivolous or vexatious. Special Court may also for reasons to be recorded by it transfer a case to the special court for its decision in the matter. A special court ordinarily is required to follow the procedures prescribed in the Code of Civil Procedure. An appeal is maintainable from a judgment or order to the special court. Sub-section (4) of Section 7A makes a finding of the special tribunal with regard to any alleged act of land grabbing to be conclusive of the said fact as also the persons who committed the act of land grabbing conclusive.

Section 8 provides for the procedure and power of the special courts, the relevant portions whereof read as under:

8. Procedure and Powers of the Special Court:--(1) The Special Court may, either suo motu, or on application made by any person, officer or authority, take cognizance of and try every case arising out of any alleged act of land grabbing,

or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit.

XXX XXX XXX (2B) Notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act. (Central Act 2 of 1974).

(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.

(7) It shall be lawful for the Special Court to pass such order as it may deem fit to advance the cause of justice. It may award compensation in terms of money for wrongful possession of the land grabbed which shall not be less than an amount equivalent to the market value of the land grabbed as on the date of the order and profits accrued from the land, payable by the land grabber to the owner of the grabbed land and may direct re-delivery of the grabbed land to its rightful owner. The amount of compensation and profits, so awarded and costs of re-delivery, if any, shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a Civil Court, in any other case to be executed by the Special Court.

Provided that the Special Court shall, before passing an order under this Sub-section, give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard and consider such representation and evidence.

(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, shall stand transferred to the Special court as if the cause of action on which such suit or proceeding is based had arisen after the constitution of the special court.

Section 10 of the Act provides for the burden of proof. Section 15 of the Act contains a non-obstante clause stating that the provisions thereof shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a court of any other tribunal or authority.

10. The Act indisputably confers a wide jurisdiction upon the Special Tribunal and Special Court. All attributes of a civil litigation can be gone into by the Special Court and the Tribunal. The Tribunal is not only a court but by reason of a legal fiction created is deemed to be a civil court. It contains a non-obstante clause, by reason whereof the provisions of the Act would prevail over the Code of Civil Procedure, 1908 as also the Andhra Pradesh Civil Courts Act, 1972.

The Tribunal, however, derives jurisdiction only when jurisdictional facts are disclosed in the petition. For invoking the jurisdiction of the said court, it is necessary not only to allege the act of land grabbing within the meaning of the provisions of the Act but also a prima facie case must be found out to the Special Court and/or the Tribunal in order to enable it to issue notices upon satisfying itself as regards existence of an act of land grabbing. When it takes a suo motu action, it has to hear the alleged land grabbers also. The statute, therefore, provides for sufficient safeguards. Ordinary disputes with regard to a title of property are not within the exclusive jurisdiction of the Special Court or the Tribunal. They have to be determined in ordinary civil courts. The Special Courts and the Tribunals are not substitutes for the civil courts in the litigations involving a civil dispute relating to immovable property within the meaning of Section 9 of the Code of Civil Procedure. It has the exclusive jurisdiction where land grabbing is alleged or appeared from the application filed before it.

11. The principal disputes which are required to be determined by the Special Court, in view of the statements made by the appellant before it, were:

(i) Whether the property in question was a joint family property or a self-acquired one and in case it was found to be joint family property, whether Ram Katin Singh was the Karta thereof.

(ii) Whether Ram Katin Singh died in 1978 or in 1992.

12. Such broad questions, in our opinion, have rightly been held to be beyond the purview of the Special Court as the concise statement did not disclose the foundational fact of land grabbing. In the concise statement, it was merely stated:

12. It is submitted that the applicant informed that the said transfers through so called manipulated, created and fabricated sale deeds in favour of M. Linamaiah and M. Vijaya Bhaskar Reddy are not the transfers effected by late Ram Katin Singh, the brother of the applicant, after 2 years of his death, which documents are illegal, unlawful and void documents and that such documents do not convey or transfer any of the applicant's rights in respect of the application schedule

land, which were mentioned in the said documents, which document are illegal and unlawful transfers either on facts or in law.

13. Our attention has also been drawn to the paragraph 15 of the said concise statement, which reads as under:

15. It is submitted that all the respondents had resorted to illegal, unlawful and malafide acts of creation of documents on the client's land by resorting to forgery of the signatures of late Ram Katin Singh and fabrication of the sale deeds impersonating the dead person late Ram Katin Singh.

14. Such bald allegations, both according to the Special Court as also the High Court creating a forged document by itself would not come within the mischief of 'Land Grabbing'. Appellant indisputably could raise such contentions before a civil court. Such a relief of delivery of and cancellation of the deed comes within the purview of Section 31 of the Specific Relief Act, 1963.

15. Mr. Hanumanth Rao has placed strong reliance on paragraph 7 of the decision of this Court in L.L. Sudhakar Reddy and Others Vs. State of A.P. and Others, , which reads, thus:

7. In the view we have taken, we do not propose to express any opinion on merits of the case. Suffice it to observe that having made the observation that the appellants could have availed the remedies of review u/s 17-A of the Act and the suit for declaration of title and right, in our view, the learned Single Judge ought not to have expressed any opinion on the merits of the case because after the High Court has put its seal of approval on the judgment and order of the Special Court, the result of the review application and the suit would become a foregone conclusion. Further in regard to the remedy of the suit, having regard to the provisions of Sub-section (2) of Section 8 read with Section 15 of the Act, no suit for title in respect of the disputed land which is alleged to be a land grabbed by the first appellant, could be entertained by the civil court. It may be apt to point out that under Sub-section (8) of Section 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, stood transferred to the Special Court as if the causes of action on which the suit or proceeding is based had arisen after the constitution of the Special Court. In other words the suit for declaration of title by the appellants would not be maintainable. For the above reasons, the order of the Division Bench under challenge confirming the order of the Single Judge is set aside, the writ petition is restored to the file of the High Court and the case is remitted to the High Court for deciding the writ petition afresh in accordance with law.

The said decision, itself, suggests that the lands must be found to have been grabbed before proceeding under the Act could be initiated.

16. Reliance has also been placed on Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others, wherein this Court opined:

45. In regard to the ingredients of the expression "land grabber", it is necessary to point out that it is only when a person has lawful entitlement to the land alleged to be grabbed that he cannot be brought within the mischief of the said expression. A mere prima facie bona fide claim to the land alleged to be grabbed by such a person, cannot avert being roped in within the ambit of the expression "land grabber". What is germane is lawful entitlement to and not a mere prima facie bona fide claim to the land alleged to be grabbed. Therefore, the observation of the Division Bench of the High Court in the said Writ Appeal No. 61 of 1978 that the appellant can be taken to have prima facie bona fide claim to the land in dispute which was relevant for the said Land Encroachment Act, cannot be called in aid as a substitute for lawful entitlement to the land alleged to be grabbed, which alone is relevant under the Act.

17. Respondents herein have prima facie satisfied the Special Court that they have lawful entitlement to the land in question and have possession thereof since 1980.

18. In Gouni Satya Reddi Vs. Govt. of Andhra Pradesh and Others, , it was held:

10. From a reading of the definitions of the phrases "land grabber" and "land grabbing" it is clear that the grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally. That is to say, the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement. If such elements as indicated above are missing in our view, it would not be a case of land grabbing.

Upon considering the facts, it was furthermore opined:

...The Special Court has not recorded any finding that no such publication was made. S. Prabhakara Rao may have been an impostor, or not a genuine person or a genuine power-of-attorney holder of Respondent 3, but neither is there any such finding nor facts or circumstances on the record to impute any such knowledge to the appellant at the time of execution of sale deed in his favour. The provisions of the Act would not cover such cases, unless coupled with the fact of not being entitled to possession the person enters into possession with a view to obtain illegal possession. Where such view of taking illegal possession is missing or lacking, a person would not be covered under the definition of the phrase or expression "land grabber". The facts, to indicate such intention, though have been pleaded, as indicated earlier, but no such finding has been recorded. The mere fact of legally not entitled to the possession would not fulfil the ingredients of the definitions of "land grabber" and "land grabbing"...

19. We may, however, notice that in N. Srinivasa Rao Vs. Spl. Court under A.P. Land Grabbing (Prohibition) Act and Others, , a Two-Judge Bench of this Court opined that the Special Court has no jurisdiction to decide question as regards acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of the civil court.

20. In *A.P. Housing Board Vs. Mohammad Sadatullah and Others*, , another Two-Judge Bench although noticed the difference of opinion in the decisions of this Court in *N. Srinivasa Rao (supra)* and *Konda Lakshmana Bapuji (supra)* in the light of factual matrix involved therein, directed that the dispute between the parties be determined by a civil court.

21. We may furthermore notice that the question in regard to the jurisdiction of the land grabbing court has been considered at some length in *Mahalaxmi Motors Ltd. Vs. Mandal Revenue Officer and Others*, wherein inter alia it was stated:

40. The Tribunal being possessed of extensive jurisdiction, subject of course to fulfilment of the conditions precedent, for initiation of the proceeding, was entitled to go into all issues. We have furthermore to bear in mind that the definition of "land grabber" is not only restricted to the party to the proceeding, but also includes his predecessor-in-interest. Once the land is held to be a government land, the logical corollary thereto would be that subject to the law of limitation and prescription, the State would not lose the said right to the opposite party.

41. It may be true that absence of lawful entitlement by itself may not be sufficient to pass a judgment and decree in favour of the State and against the land grabber, but also it must be shown that he had taken illegal possession thereof.

It was furthermore opined:

44. We would like to add that the person's purported belief that he is legally entitled to hold the land and his possession is not otherwise illegal must also be judged not only from the point of time when he entered into the possession or when he had acquired the purported title but also from the point of view as to whether by reason of determination of such a question by a competent court of law, he has been found to have no title and consequently continuance of his possession becomes illegal. If the proceedee against whom a proceeding has been initiated under the provisions of the said Act is entitled to raise the question of adverse possession, which being based on knowledge of a lawful title and declaration of the hostile title on the part of the person in possession, there does not appear to be any reason as to why knowledge of defect in his title and consequently his possession becoming unlawful to his own knowledge would not come within the purview of the term "land grabbing" as contained in Section 2(e) of the Act. The provisions of the Act must be construed so as to enable the tribunal to give effect thereto. It cannot be construed in a pedantic manner which if taken to its logical corollary would make the provisions wholly unworkable. Only because a person has entered into possession of a land on the basis of a purported registered sale deed, the same by itself, in our considered opinion, would not be sufficient to come to the conclusion that he had not entered over the land unauthorisedly, unfairly, or greedily.

22. The question has now been settled by a Three-Judge Bench of this Court in *V.*

Laxminarasamma v. A. Yadaiah (Dead) and Ors. 2009 (3) SCALE 685 wherein it has categorically been held that the Special Court/ Tribunal has the requisite jurisdiction to decide the question of adverse possession.

This case, as indicated hereinbefore, stands on a different footing.

23. Mr. Hanumanth Rao would submit that whereas under the Act the burden of proof would be on the land grabber, in the civil court, it would be on the plaintiff. It may be so, but, in a case of this nature, where jurisdictional facts have not been pleaded, the Special Court could not have exercised its jurisdiction.

Furthermore, in Smt. K. Sharada Bai and Another Vs. Smt. Shamshunnisa and Others, , this Court upon noticing the definitions of "land grabbing" as also "land grabber" held as under:

...In view of the above statutory provisions and of the claim of the applicant that she is the original owner of the schedule property and her land was grabbed by the appellants, the initial burden is on her to prove her right and title to the property and if the same is discharged, the burden shifts on the respondents.

24. It is not a case where the respondents claimed their title by reason of a registered deed of sale, which was executed long time back. They have been exercising their right of possession over the lands in suit for 22 years. Appellant did not disclose that he had either been in possession of the land or he has been dispossessed. He had not been able to show any act of possession on his part or on the part of the predecessor-in-interest after 1978. An application at his instance was maintainable provided he proved himself to be lawfully entitled to be restored back possession by establishing the fact that the land has been grabbed.

25. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. No costs.