
(1999) 02 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22819 of 1998

P. Ravinder and others

APPELLANT

Vs

Ethirajamma and another

RESPONDENT

Date of Decision : 19-02-1999

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 10, 7A, 8(1), 8(2)
Constitution of India, 1950 — Article 226

Citation : (1999) 2 ALD 388 : (1999) 2 ALT 249

Hon'ble Judges : Neelam Sanjiva Reddy, J; N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Mr. S. A. Quddus, for the Appellant; Ms. M. Kavitha and Mr. P. Rajagopala Rao, Government Pleader for L.A., for the Respondent

Judgement

N.Y. Hanumathappa, J

1. This writ petition is filed to declare the judgment and decree dated 2-4-1998 passed in L.G.A. No.46 of 1997 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act confirming the judgment and decree dated 21-7-1997 passed in OP No.560 of 1991 on the file of the Chief Judge, City Civil Court, Hyderabad-cum-Special Tribunal under A.P. Land Grabbing (Prohibition) Act.

2. The said OP No.560 of 1991 was filed by the 1 st respondent herein under subsection (1) of Section 7A r/w Section 8(1) of A.P. Land Grabbing (Prohibition) Act, 1982 to declare the petitioners herein as land grabbers and for their eviction and also for payment of compensation of Rs.20,000/- to the 1st respondent herein. The learned Trial Judge allowed the petition ordering eviction of the petitioners herein and disallowing the claim of the 1st respondent for compensation. Aggrieved by this, the petitioners carried the matter in appeal in L.G.A. No.46 of 1997 which was dismissed by the Appellate Court continuing the judgment and decree of the learned trial Judge. Aggrieved by this, the present writ petition.

3. An extent of 700 Sq.yards described as Plot No.36 situated in S.No.112 of Bakaram village is the subject matter of this writ petition. According to the 1st respondent, she is residing with her family at Tenali. She purchased the said land under Al registered sale-deed No.854 of 1976 dated 13-8-1975 from Smt. Kosaraju Kamalamma. According to her, her vendor Kamalamma inherited the said property from her husband K. V. Subbaiah who died in the year 1972. The said Subbaiah purchased the land in question from four persons namely M. Kondal Reddy, Voggit Devni Mallaiah, hidraji Mallesh and Indrajai Pandaraiah under Ex.A2 sale-deed No.2556 of 1962 dated 29-9-1962. As per the recitals in the sale-deed V.D. Mallaiah was the pattedar and hidraji Anjaiah and Indrajai Pandaraiah were the protected tenants of the land in question. The said Kondal Reddy entered into an agreement to purchase this land from them in June, 1962 and he submitted a lay-out to the M.C.H. and plot No.36 was sold by the owners to K.V. Subbaiah who was the nominee of Kondal Reddy. According to the 1st respondent, her predecessors-in-title were in possession and enjoyment of the land in question and she purchased the said land for construction of a house. Accordingly her husband submitted a plan to the M.C.H. in the year 1985. One S. Venkat Reddy constructed a house in the adjacent plot No.35 after obtaining permission from the MCH. The allegation of the 1st respondent is that in the year 1990 when they came to 1 lyderabad and visited the land in question, they found the petitioners herein in the said land as encroachers and also found some structures with cement roof sheds and, thus, the petitioners occupied illegally the portion of the land in question and as such they are land grabbers. The 1st respondent also alleged that the petitioners herein along with others also encroached the adjacent plot namely Plot No.37 belonging to third parties and in that connection a case and counter-case were filed before the Civil Court and they are pending. According to the 1st respondent, she was put in possession of the land in question on 11-10-1974 by her vendors and she erected fence along the boundary. Taking advantage of their absence, (he petitioners encroached the land illegally and raised structures unauthorisedty being without any permission from MCH and, thus, they are land grabbers.

4. On the other hand, the petitioners' case is that the land in question belongs to the Government and vested in the MCH; a canal runs from the tank along this bund; the petitioners' fathers constructed kutcha house on this land about 48 years and since then they have been residing there with their family and they have been in continuous possession and enjoyment of the said land with any interruption till date and, thus they have perfected their title by adverse possession. The petitioners denied the title of the vendors of the 1st respondent nor any lay-out was sanctioned in favour of the vendors of the 1st respondent. According to the petitioners, mere agreement of sale does not confer any title on M. Kondal Reddy. The petitioners also denied submitting of any plan by the 1st respondent to the MCH. They stated that the land in question is water stagnated and is a part of tank bund and the ownership vests with the Government. According to them, the possession of the land was never delivered to the 1st

respondent by her vendors as the vendors filed OP No.149 of 1987 in respect of the said land and the same is pending before the trial Court. The petitioners submitted that the said Kondal Reddy instigated the MCH by using his influence and then they were constrained to file OS No. 1609 of 1977 against the MCH and the said Kondal Reddy for injunction. According to the petitioners, they never encroached the land in question as alleged by the 1st respondent nor they were land grabbers.

5. Basing on the above pleadings, the trial Judge framed the following issues :

1. Whether the petitioner is the owner of the petition schedule property and whether the respondents have encroached upon and grabbed it?

2. Whether the respondents are land grabbers?

3. Whether the respondents perfected their title over the petition schedule property by adverse possession?

4. Whether the petitioner is entitled for compensation as claimed?

5. To what relief?

6. Before the trial Court, the husband of the 1st respondent, was examined as PW1 and one Ananda Babu, working as Assistant City Planner in MCH was also examined as PW2. As many as 16 documents were marked on behalf of the 1st respondent herein before the Trial Court as Exs.A1 to A16. On behalf of the petitioners herein, the 1st and 2nd petitioners examined themselves as RWs 1 and 2 and one D.K. YeUaiah, President of Shanti Washermen Co-operative Society, Ashoknagar was also examined as RW3. Exs.B1 to 57 were marked on behalf of the petitioners.

7. After considering the entire material, the trial Judge ordered eviction of the petitioners herein granting four months" time for vacating the land in question. Aggrieved by this order, the petitioners carried the matter in appeal which was also dismissed confirming the eviction ordered and giving four months" time for vacating the land.

8. The petitioners attacked the judgments of the Courts below on several grounds. According to them Exs.A1 to A2 are fabricated documents and as such the Courts below should not have placed reliance on those documents. The 1st respondent has not established her title on the disputed land and no lay-out said to have been sanctioned was filed before the Court. Except Ex.A1, there is no other document to show the possession of the 1st respondent at any point of time. The Courts below failed to consider the filing of OS No.1609 of 1977 by the petitioners, in respect of the land covered by the petition schedule property and also adjacent land which fact clearly proves the possession of the petitioners over the disputed land. The findings of the Courts below that the petitioners herein have not included the land in question in the suit OS No. 1609 of 1977 is incorrect. The Courts below failed to consider Exs.B1 to B5 and B17, the Lagna

Patrikas, which prove the possession of the petitioners over the land beyond the statutory period. The Courts below failed to consider the title of the petitioners by adverse possession.

9. On the other hand, the husband of the 1st respondent filed counter supporting the judgments and decrees of the Courts below. According to him the judgments of the Courts below are the result of proper appreciation of the evidence which does not call for any interference of this Court. He submitted that the writ petition was filed at a belated stage. According to him, the petitioners' Counsel before the Appellate Court admitted, during the course of arguments, as to the title of the 1st respondent herein and the Appellate Court made observation to that effect and as such the judicial record cannot be questioned as held by the Privy Council in *Somasundaram v. Subramanian*, AIR 1926 PC 136. The documents produced by the 1st respondent namely Exs.A1 to A16 establish her title over the land in question. In the counter, he referred to some of the statements and admissions made by the 1st petitioner herein as RW1 during his examination and contended that the evidence of the 1st petitioner shows that they failed to establish their title over the disputed land. He also referred to some of the contradictory statements made by the 1st petitioner, the 2nd petitioner and RW3 in their statements and contended that the above contradictions falsify the case of the petitioners. Thus urging, he sought that the writ petition be dismissed.

10. The scope for interference under Article 226 of the Constitution of India in matters of this type is very much limited. In the case on hand both the Courts below held against the writ petitioners. Even the theory of adverse possession is not accepted. Sri S.A. Qudus, the learned advocate appearing for the writ petitioners contended that sufficient opportunity was not given to his clients to prove the case. According to him, the entire orders of the Courts below are quite arbitrary and perverse. Though it is not necessary once again to go into the evidence that was considered by the Courts below, to know how far the Courts are justified in reaching the conclusion, we would like to refer to the findings given by the Courts below, particularly, the Special Court on the point raised. On the issue whether the respondents herein are the owners of the petition schedule property and the writ petitioners herein encroached upon the said land and grabbed it, the Courts below took into consideration the admissions made by the learned advocate for the writ petitioners to the following effect:

"Though the contention of the respondents is that the petitioner as well as her vendor have no manner of right or title over the petition schedule land, during the course of arguments Sri S.A. Qudus, the learned Counsel appearing for the respondents has fairly conceded that he is not disputing the title of the petitioner over the petition schedule land and submitted that the respondents are claiming their right and that they have perfected their title over the petition schedule land by adverse possession."

11. Regarding adverse possession, the Courts below took into consideration the

principles laid down by this Court in Tadi Surya Rao Vs. Dr. Gurubhavatula Ramakrishna Rao and Another, , on the question of land grabbing u/s 10 of the Land Grabbing Act. The Courts below examined the evidence, of both oral and documentary given by both the parties and disbelieved the theory of the respondents that they have been in possession and enjoyment of the petition schedule property for more than 40 years. Another circumstance to hold that the theory of the writ petitioners incorrect is regarding the extent of area in occupation. According to the Court, RW2 stated that the area is in an extent of 1400 Sq.yards whereas RW1 stated 1600 Sq.yards. In addition to the discrepancy as to date of coming in possession of the property and the area, the Courts below also took into consideration the value of some of the documentary evidence produced by the writ petitioners, viz., lagna patrikas clc. As far as the lagna patrikas are concerned, the Courts below found that they all relate to remote period that too in manuscript. When the writ petitioners stated that they lost some of the documents as to the possession which were kept in their custody were washed out, it is very difficult to believe that how these lagna patrikas alone were retained by them. According to the Courts below, the said documents, viz., lagna patrikas etc., were only brought up documents, as such, no sanctity can be attached. The Courts below also disbelieved the veracity of the other documents, viz., ration cards etc. The Courts below found that the voters lists of the years 1984 and 1988 are of no use to the case of the respondents, for the reason that the voters lists from 1952 onwards which are relevant in the case to substantiate the claim of the respondents are not produced. The Courts below disbelieved Exs.B28, B29 to B56. Another reason which the Court below held against the writ petitioners was that the writ petitioners did not include plot No.36 in the petition schedule land in OS No. 1609 of 1977 which goes to show that they were not in possession of the land even in the year 1977. The Court below found that the writ petitioners failed to establish that they have been in possession of the property for more than statutory period. The ingredients of adverse possession were not established, viz., that the writ petitioners were in continuous and exclusive possession and enjoyment of the petition schedule property for a statutory period to the knowledge of the real owner. This view of the Court below is supported by the principles laid down by this Court in State of A.P. v. Fakrubi AIR 1962 AP 518; Mohd. Ibrahim v. The Secretary to the Government of India, Ministry of Defence 1996 (1) LS 285, and also the ruling of the Karnataka High Court in Chandrasekhar v. Shidagireppa AIR 1971 Mys 339, and the ruling of the Kerala High Court in the case of Rosily Mathew and Others Vs. Joseph, . The relevant portions as held in Fakrubi's case (supra) is extracted hereunder:

"A party, who sets up a title by adverse possession, has to affirmatively prove his or her possession for over the statutory period and presumptions and probabilities cannot be substituted for evidence. Adverse possession has to satisfy necessarily the tests of adequacy, continuity, exclusiveness and publicity. The party, who asserts this, has necessarily to bear out his case with reference to

these necessary elements. To say that when enjoyment for over 50 years was accepted, it would be tantamount to an enjoyment for over 60 years is wrong. The law cannot be interpreted that way".

12. So also the principles laid down in the case of Mohd Ibrahim (supra) are also extracted hereunder:

"...Once the initial title of the plaintiff is established the onus is upon the defendant to establish the plea of adverse possession. It is equally well settled that when the suit is based upon title and the title is denied on the basis of adverse possession, such plea has to be specifically raised and established through evidence. Unless the plea is raised even leading of evidence can be adduced which is not in consonance with the pleadings. It is conceded that the respondents did not raise the plea of adverse possession. As has been rightly submitted, the very case of the respondents was asserting title in themselves and the appellants as not having title to the land. On the contrary, when a plea, of adverse possession is raised it is basically first of all admission of the antecedent title of the plaintiff and then there after destruction of the same through adverse possession. But this is a case where the respondents did not admit the prior title of the appellants."

13. The Court below found that the 1st respondent herein proved beyond reasonable doubt that she is the owner of the property having right over the same and also established that the writ petitioners are the land grabbers by placing reliance on the decision of this Court in Tadi Siaya Rao's case (supra) wherein the scope of Sections 8(2) and 10 of the Act was dealt with. Thus, the 1st respondent herein was able to establish that she is the owner of the property and the same is not vested in the Municipality. The 1st respondent herein perfected her case by adverse possession. The theory of ownership is supported by the admission made by the learned Counsel appearing for the petitioners herein. When an admission is made, according to the Court, such an admission shall not be held as wrongly made as held by the Privy Council in Somasundaram's case (supra). In Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, , it is held that the scope to interfere under Article 226 of the Constitution in matters of this type is very much limited and the same view was taken by a Division Bench of this Court in Mohd. Iqbal Vs. N. Prabhakar and Another, , in which one of us (N.Y. Hanumanthappa, J.) is a member and again in Konda Lakshmana Bapuji Vs. Government of AP, Hyderabad and others, , the same view was taken.

14. In the settled legal position, we do not find that there is any good ground to interfere in the orders passed by the Court below by allowing the writ petition. Hence there is no merit.

15. Accordingly, the writ petition is dismissed. No costs.

16. However, before parting with the case we would like to mention that taking into consideration the difficulty of the writ petitioners who belong to weaker

sections in the Society, we suggested the Collector of Hyderabad and Secunderabad whether it is possible for him to provide any alternate site in an area within the jurisdiction of Hyderabad and Secunderabad. As suggested, the Collector also appeared before the Court and assured that he would locate some site and allot the same to the writ petitioners herein. Even he addressed a letter on 10-11-1998 to the Government Pleader for Land Acquisition, High Court of Andhra Pradesh to the following effect:

"With reference to your letter cited, I am to inform you that as per the orders issued by the Honourable High Court in WP 22819 of 1998, dated 21-10-1998, we are taking steps for allotment of alternative Government vacant land to the writ petitioners and for completing this process atleast (6) months time is required.

I therefore request you to putforth the above facts before the Honourable Court and request the Court to grant atleast (6) months time in order to complete the entire process and to rehabilitate the writ petitioners."

17. The Collector assured the Court that he would take steps for allotment of alternative Government vacant land to the writ petitioners, which, shall not come in the way of the 1st respondent herein - the land owner, to take steps to get the possession of the land.

18. With the above observation, the writ petition is dismissed. No costs.