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(2010) 10 SC CK 0031

In the Supreme Court Of India

Case No : Civil Appeal No''s. 8472 and 8473 of 2003

Phatru Patel and Others — APPELLANT

Vs

Revenue Divisional Officer and Others — RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2, 8(1A)
Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 — Rule 15(3), 7, 8
Constitution of India, 1950 — Article 14, 226

Citation : (2011) 4 SCALE 3

Hon'ble Judges : J. M. Panchal, J;Gyan Sudha Mishra, J

Bench : Division Bench

Advocate : P.S. Mishra, Swarupa Reddy, Dhruv Kumar Jha, Upendra Mishra, Tathagat Harsh Vardhan, Rajesh Prasad Singh and T.N. Rao, for the Appellant; R.P. Bhatt Anjani Aiyagari, D. Rajeswar Rao, I. Venkatnarayana C.K. Sucharita, Nirada Das, A.S. Nambiar Y. Vismai Rao, Y. Raja Gopala Rao, Sridhar Potaraju, D. Julius Riamei and Gaichangpou Ganmei, for the Respondent

Final Decision : Allowed

Judgement

1. The instant appeal is directed against the judgment dated 29.03.2000 in Writ Petition No. 24706 of 1996 by which the prayers made by the Appellants to declare that the action of the District Collector Rarigha Reddy District, in seeking to evict them from the lands bearing Survey Nos. 130 to 133 of Village Fathenagar, Mandal Balanagar, District (sic) Reddy, A. P., which are in their possession, by demolishing the residential houses/business premises situated in those survey numbers, is arbitrary, illegal, violative of principles of natural justice and violative of their fundamental rights guaranteed under Article 14 of the Constitution and to issue consequential direction to the Respondents not to interfere with their peaceful possession of the residential houses/business premises located in those survey numbers as well as to set aside the order dated 20.01.1992 rendered in LGC No. 3 of 1988 passed by the Special Court established under A.P. Land Grabbing (Prohibition) Act 1982 (the Act, for short)

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declaring them to be land grabbers, under the Act, are rejected.

2. The Appellants claim that they had derived title to the lands in question through one Hukumlal and that they had constructed residential houses/business premises therein and are in possession of the same. The Respondent Nos. 3, 4 & 5 initiated LGC No. 3 of 1988 in the Special Court established under the Act seeking possession of Survey No. mentioned above on the ground that they are owners of the same and 58 persons against whom the said case was instituted were land grabbers within the meaning of Section 2(d) of the Act of 1982. On application being presented, the Special Court took cognizance and thereafter issued notices as contemplated by the proviso to Section 8(1A) of the Act read with Rule 7 of the A.P. Land Grabbing (Prohibition) Rules, 1988. After hearing the parties, the Special Court, by judgment dated 20-01-1992 declared the Appellants to be land grabbers. The said order was sought to be executed by the Respondent Nos. 3 to 5 against the Appellants. Therefore, the Appellants invoked extra ordinary jurisdiction of the High Court of Judicature at Andhra Pradesh at Hyderabad under Article 226 of the Constitution, by filing W.P. No. 23019 of 1996 and challenged the warrant of authorisation issued by the Respondent Nos. 1 and 2 in favour of the Respondent Nos. 3 to 5. The High Court, by order dated 13.10.1996 disposed of the Writ Petition directing the Respondent Nos. 1 & 2 to serve copy of warrant of authorisation on the Appellants as contemplated under Sub-rule 3 of Rule 15 of the Rules of 1988, before taking possession of the lands. The prayer was made by the learned Counsel for the Appellants to grant some time to enable the Appellants to vacate the lands, which was granted by the High Court Thereafter, the Appellants filed another Writ Petition being W.P. No. 24706 of 1996 and claimed the reliefs which are referred to earlier. As observed earlier, the High Court has rejected the petition giving rise of the instant appeal.

3. This Court has heard the learned Counsel for the parties and considered the documents forming part of the instant appeal. It may be mentioned that vide order dated 09-08-2001, the SLP against the Respondent No. 6 Hukumlal was treated as having abated because no steps were taken to bring on record his legal representatives.

4. Mr. P.S. Mishra, learned senior counsel for the Appellants contended that no notice as contemplated by Rule 8 of the Rules 1982 was served on any of the Appellants and, therefore, the judgment rendered in LGC No. 3 of 1988 was not binding on the Appellants. Mr. R.P. Bhatt, learned senior counsel for Respondent Nos. 3 to 5 contended that after taking cognizance of the application submitted by the Respondent Nos. 3 to 5, notice in form No. II was published in Gazette as required by Rule 7 of the Rules and as the Appellants were aware about the proceedings initiated against them, the belated plea raised before this Court should not be entertained by the Court. It was also contended on behalf of the Respondent Nos. 3 to 5 that the Appellants who had purchased different parcels of lands from Hukumlal would not get better title than Hukumlal as Hukumlal was declared to be a land grabber and therefore the Appellants were not entitled to

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any protection under the Act.

5. From the record of the case, it is evident that after publication of notice as contemplated by Rule 7, no further notice was given to any of the Appellants. Rule 8 of the Rules reads as under-

8. Notice to persons interested in land: (1) The Special Court shall give notice in Form III-A to the persons known or believed to be interested in the land.

(2) The Tribunal shall give a notice in Form III-B to the persons known or believed to be interested in the land.

6. A bare reading of above quoted Rule makes it evident that the Special Court has to give notice in Form No. III-A to the persons known or believed to be interested in the land. The case of the Appellants is that they had purchased the lands from Hukumlal between 1980 and 1987 i.e. prior to initiation of case under the provisions of the Act of 1982 before the Special Court by the Respondent Nos. 3 to 5. Under the circumstances, this Court is of the opinion that it was the duty of the Special Court to issue notices to the Appellants in Form III-A and hear them. The High Court has failed to consider the question whether the Appellants were served as required by law. The impugned judgment does not indicate that the High Court had examined the plea raised by the Appellants that they had acquired interest in the lands prior to filing of the case by the Respondent Nos. 3 to 5. Except stating that Appellants are/were claiming through Hukumlal, no other contention raised in the petition was examined by the High Court. As the record does not indicate that any notice as contemplated by Rule 8 of the Rules was served by the Special Court on any of the Appellants, it will have to be held that the judgment passed by the Special Court in the application filed by the Respondent Nos. 3 to 5 is illegal and void. Therefore, the appeal will have to be accepted.

7. For the foregoing reasons, the appeal succeeds. The judgment of the High court impugned in the appeal is set aside. The judgment and order dated 20.01.1992 rendered in LGC No. 3 of 1988 by the Special Court, Andhra Pradesh is also set aside. It is clarified that it will be open to the Respondent Nos. 3 to 5 to initiate appropriate action against the present Appellants for appropriate relief in accordance with law. The appeal is allowed accordingly. There shall be no order as to cost.

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8. De-tag this matter.

9. On the request of learned Counsel for the Appellants, the matter is adjourned to third week of November, 2010.

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