

(1999) 11 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22714 of 1999

Pithana Nanda Kumar and others

APPELLANT

Vs

Kostu Eswara Rao and others

RESPONDENT

Date of Decision : 12-11-1999

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12(1)
Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 106

Citation : (2000) 1 ALD 575 : (1999) 6 ALT 493

Hon'ble Judges : Ramesh Madhav Bapat, J; C.Y. Somayajulu, J

Bench : Division Bench

Advocate : M/s. A. Suryanarayana Murthy, D. Srinivas, B. Kamalakara Rao and S. Satyanarayana Rao, for the Appellant;

Judgement

Ramesh Madhav Bapat, J.—The petitioners herein have invoked the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ or order or direction more particular a writ of certiorari and call for the records on the file of the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, Hyderabad, in LGC.SR.No.104 of 1997 dated 30-11-1998 and quash the same and grant consequential relief by directing the Special Court to number the case and dispose of the case on merits.

2. It appears from the record that the petitioners-applicants herein claimed to be the owner of the land in dispute which is covered by TS No.1050/1 admeasuring Ac.10.3 cents, popularly known as "Pithana Dibba" of Visakhapatnam. The petitioners further claimed that it is their ancestral property. It is further stated that one P. Sita Rama Swamy and his brother P. Appala Swamy were entitled to and were in possession of the property in the ratio of 2:1 and the applicants 1 to 7 are the grandsons, grand-daughters and daughter-in-law of P. Sita Rama Swamy and applicants 8 and 9 are daughters of P. Appala Swamy. It is further averred by the applicants herein that the Settlement Officer, Visakhapatnam

granted ryotwari patta in favour of late P. Appa Rao, the only son of P. Sita Rama Swamy, in Patta No.921, u/s 11-A of Andhra Pradesh Estates Abolition Act. On the death of P. Sita Rama Swamy, P. Appa Rao S/o Sita Rama Swamy and Paidamma, the wife of Appala Swamy, namely the mother of applicants 8 and 9 inherited the property in their respective shares. On the death of Paidamma, the applicants 8 and 9 became entitled to her share. It is further stated in the application that the applicants who are the Legal Representatives of Appa Rao and Paidamma inherited the application schedule property and that even during the life time of P. Appa Rao, each of the un-official respondents, who migrated to Visakhapatnam in search of employment, took different extents of land agreeing to pay different amount as ground rent for raising a temporary shelter for their stay at Visakhapatnam. It is further averred by the petitioners herein that the petitioners had given different extent of land to the respondents herein only for the purpose of erecting shed for a particular period and after expiry of the lease, the petitioners herein had terminated the lease of the respondents herein by issuing legal notice. In spite of the notice, the unofficial respondents did not vacate the land and, therefore, the petitioners herein were constrained to file an application before the Special Court. It is further averred that the Special Court, on hearing both sides, held that it had no jurisdiction to take cognizance of the case and accordingly the application filed before it was dismissed. Aggrieved by the said order, the present petitioners have approached this Court by filing the present writ petition.

3. The learned Counsel Sri A. Suryanarayana Murthy appearing on behalf of the writ petitioners-applicants submitted at the Bar that the respondents herein were granted different extent of land by executing documents of lease and when the lease period was over the petitioners herein terminated the lease of the unofficial respondents by issuing notice and that in spite of notice, they did not vacate the land and, therefore, they are "land grabbers" and the learned Judges of the Special Court established under the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act (for short "the Act") ought not to have dismissed the application filed by the petitioners.

4. In order to understand and appreciate the legal point raised by the learned Counsel for the petitioners, it is appropriate to note the definition of "land grabber" and "land grabbing" given u/s 2(d) and (e) of the Act respectively, which read as under:

" "Land grabber" means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the abovementioned acts, and also includes the successors in interest.

"Land grabbing" means every activity of grabbing of any land (whether belonging to the Government, 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 unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorised structures; and the term "to grab lands" shall be construed accordingly."

5. By reading the two definitions as given in Section 2(d) and (e) of the Act, it is evident that a person who takes illegal possession of land which belongs to the Government or local authorities or any religious or charitable institutions or any individual is to be styled as "land, grabber".

6. Admittedly, in the present case, the petitioners herein have pleaded in their application itself that the respondents herein are lessees of the petitioners and their lease was terminated by issuing notice and that after the lease was terminated they continued to be in illegal possession of land and, therefore, they are to be treated as land grabbers. We are not in agreement with the submission made by the learned Counsel for the petitioners for various reasons. In the petition it is alleged that the lease of the unofficial respondents was terminated by the petitioners. It means that, at the first instance, the respondents entered into the land of the petitioner legally. Therefore, after termination of the lease, they continued to be in possession of the land as "tenants holding over". The word "tenant holding over" as given u/s 106 of Transfer of property Act is not synonymous to the word "trespasser" or "land grabber". Both these two words have different connotations. It is by the fiction of law that if the tenancy is terminated, the tenant becomes tenant holding over. He does not get the status of or become a "land grabber".

7. The learned Counsel for the petitioners herein has relied upon various rulings of this Court as well as of other Courts. Reliance was kept by the learned Counsel on the ruling of a Division Bench of this Court in K. Narsing and Others Vs. The Special Court under A.P. Land Grabbing (Prohibition) Act and Others, . Reliance was also kept by the learned Counsel for the petitioners on the ruling of a single Judge of this Court in Bahaggan Bai v. Mandal Revenue Officer 1997 (4) ALD 196. The learned Counsel for the petitioners further relied upon the ruling of a single Judge of this Court in Govt. of A.P. and Others Vs. Sathaiah, . Lastly, the learned Counsel for the petitioners relied upon the ruling of a single Judge of this Court in Raghavaratnam v. State of Andhra Pradesh 1987 (1) ALT 771. We have gone through the rulings cited by the learned Counsel for the petitioners. By reading of the aforesaid rulings, we are unable to agree with the proposition that once a lease of the respondent is terminated, he becomes a land grabber as defined u/s 2(d) of the Act.

8. We have already observed that the position of the "land grabber" is quite different than that of the position of the "tenant holding over". The only remedy

available to the petitioners on terminating the lease is to file a suit for possession against the tenant holding over in a civil Court. The petitioners can also claim mesne profits under Order 20, Rule 12(1)(c) of the Code of Civil Procedure, 1908. In order to note who is a land grabber, by reading the aforesaid rulings, we have to see the status of person at the time of initial entry in the land. If a person enters into the land with the intention of grabbing it, which belongs to others, then he has to be styled as "land grabber". In the present case, the initial entry in the land by the unofficial respondents herein was legal, as there was a lease between them.

9. The learned Counsel for the petitioners submitted at the bar that the observation of the land grabbing Court that if the initial entry is lawful, then they cannot be called as land grabber, is not correct. The learned Counsel for the petitioners submitted that if the initial entry is only to be taken into consideration, then one is not expected to get correct results. The learned Counsel for the petitioners explained the above proposition by way of an illustration. It was submitted by the learned Counsel for the petitioners that there may be a where the initial entry is unlawful, and subsequently there can be an agreement between the landlord and land grabber to create a lease in favour of the land grabber, and after expiry of the period of lease if the land grabber continues to be in occupation and where tenancy is not terminated by issuing notice, such person has to be treated as a "land grabber" because his initial entry was unlawful. We are not in agreement with the submissions made by the learned Counsel for the petitioners by giving above illustration. In that case the initial entry though illegal, became legal because there was a compromise between the landlord and the land grabber by creating a lease in favour of the land grabber. Therefore, it is a case where the landlord has excused the land grabber by creating the relationship between them as landlord and tenant or as landlord and lessee. The illustration given by the learned Counsel for the petitioners has no application in the present set of facts. Initial entry in the land should be unlawful and it should be continued as unlawful till such time the landlord takes action against the land grabber, then only it can be called as "land grabbing".

10. The learned Counsel for the petitioners further submitted at the Bar that when the petitioners terminated the lease of the respondents by issuing notice, the respondent herein have replied to the petitioners herein by giving a reply denying their title and lease and claiming the title in the property. Under these circumstances, it was contended by the learned Counsel for the petitioners that if such an act is done, then the respondents have to be called as "land grabbers". We do not agree with the proposition laid down by the learned Counsel for the petitioners. The question as to whether a Court has jurisdiction or not, has to be decided by reading the plaint or application or the submissions made by the plaintiffs/petitioners in the judicial proceedings, and not by reading the defence raised by (he defendants/respondents. As we have already observed that it is the specific case of the petitioners that the respondents were introduced to the

landed property as lessees and, therefore, we are not able to agree with the submission made by the learned Counsel for the petitioners that the respondents herein are the "land grabbers". Under these circumstances, the contention of the learned Counsel for the petitioners is hereby rejected on that count also.

11. The learned Counsel for the petitioners by placing strong reliance on the ruling in *M.C. Chockalingam and Others Vs. V. Manickavasagam and Others*, , contended that as per the said decision the possession of a tenant who continues in possession after expiry of the lease is "unlawful" and hence it should be held that the unofficial respondents possession after expiry of lease is unlawful and hence they are land grabbers within the meaning of the Act. We are unable to agree. In the case (*supra*), the Supreme Court while considering the provisions of Madras Cinemas (Regulation) Act, 1957 and the Rules made therein, was interpreting the phrase "lawful possession" In Rule 13 of the Rules. In that context, it was held that possession of a tenant after expiry of lease cannot be "lawful possession" enabling him to claim renewal of the Cinema licence. The learned Judges of the Special Court have considered in detail the said decision and held that the said decision has no application to the facts of this case. We are in entire agreement with the said reasoning and we are not able to come to a different conclusion.

12. Considering the above aspect, we are of the considered view that when the petitioners themselves have pleaded in their application that the respondents herein are tenants of the open piece of land and when their tenancy was terminated, they become tenants holding over. Under these circumstances, the Special Court constituted under the Act has no jurisdiction to entertain a petition for their eviction. The only remedy available to the petitioners herein is to file a suit against the tenants holding over in a civil Court within the period of limitation. By making these observations, we dismiss the writ petition at the admission stage.