

(2002) 01 AP CK 0089

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29479 of 1998

Sada Linga Reddy and Others

APPELLANT

Vs

Mustabad Narsamma and Others

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 10, 15, 24, 26, 27
Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 — Rule 6
Constitution of India, 1950 — Article 226

Citation : (2002) 3 ALD 773

Hon'ble Judges : Motilal B. Naik, J;G. Rohini, J

Bench : Division Bench

Advocate : G.N. Reddy, for the Appellant; M. Surender Rao, N. Ramanchandra Rao, C.V. Mohan Reddy and Srinivasa Rao M, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This writ petition is filed seeking a writ of Certiorari to call for the records relating to the order dated 9.9.1998 in L.G.C.No.16 of 1996 on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 at Hyderabad and to quash the same.

2. The applicants in L.G.C.No.16 of 1996, who are 30 in number and are represented by their General Power of Attorney are the writ petitioners.

For the sake of convenience the writ petitioners and the respondents 1 to 13 herein are hereinafter referred to as the applicants and respondents as they were arrayed before the special Court under A.P. Land grabbing (Prohibition) Act - hereinafter referred to as "the Special Court".

3. Brief facts of the case are as follows:

L.G.C.No.16 of 1996 was filed seeking a declaration that the respondents 1 to 13 herein are land grabbers in respect of the application schedule property and for delivery of possession of the same to the applicants after removing the

constructions thereon. It has been pleaded before the Special Court that the 1st applicant acquired the land measuring Ac.7.02 guntas in Survey No.87 (part) situated at Old Bowenpally Village, Ranga Reddy district by way of purchase in the year 1974 and subsequently the Revenue Divisional Officer, Chevella Division, Ranga Reddy district issued Occupancy Certificate dated 4.7.1980 in favour of the 1st applicant in respect of the said land under the provisions of the A.P. (Telangana Area) Abolition of Inams Act, 1955. The applicants 1 to 5 are the members of joint family and by way of partition, the said of Ac.7.02 guntas of land was divided equally among them. The applicant No.6 is the agreement holder of the said land from the applicants 1 to 5. Applicants 7 to 30 purchased different plots out of the said land from Applicants 1 to 6 by virtue of the sales made in their favour under various documents on different dates. The plots purchased by Applicants 7 to 30 totally admeasuring about 5752.66 square yards were grabbed by the respondents 1 to 13 unauthorisedly and without any lawful entitlement. The respondents are unauthorisedly holding possession and in collusion with each other they are creating false documents in respect of the said land through respondent No.8. It is also alleged that they are making attempts to sell the application schedule land by making constructions thereon and consequently they approached the Special Court seeking the above-mentioned reliefs.

4. A counter has been filed before the special Court by the 1st respondent denying all the allegations made by the applicants in L.G.C.No.16 of 1996 and claiming that the Application Schedule Land exclusively belongs to the 1st respondent.

It is claimed by the 1st respondent that the Application Schedule Land does not form part of the land alleged to have been acquired by the 1st applicant in Survey No.87 of Old Bowenpally Village by way of purchase in the year 1974. The 1st respondent claimed that the land covered by Survey No.87 measuring about Ac.52.14 guntas is an Inam land and out of that, her husband Venkataswamy being the protected tenant was in possession of Ac.13.00 of land in Survey No.87. Subsequently out of the said Ac.13-00 of land the said Venkataswamy purchased an extent of Ac.6-00 from the inamdars under a registered sale deed. The 1st respondent claimed that her husband Venkataswamy executed a will dated 25.12.1966 bequeathing an extent of Ac.2.14 guntas of land in her favour and after the death of her husband she acquired title to the said Ac.2.14 guntas of land. The rest of the land in possession of her husband was devolved on her sons, respondents 2 to 5 by succession. According to her the application schedule land forms part of the land bequeathed in her favour by her husband under the will dated 25.12.1966. The 1st respondent further stated that by virtue of the agreement executed by her, respondents 6 and 9 are inducted into possession. Therefore, it is contended that the land grabbing case is misconceived and the applicants were never in possession of the Application Schedule Land and that the same is not at all part of Ac.7.02 guntas of land claimed to have been acquired by the 1st applicant in

Survey No.87.

5. On the basis of the said pleadings, the Special court framed the following issues for determination.

1. Whether the applicants are the owners of the application schedule property?
2. Whether the rival title set up by the respondents is true and valid?
3. Whether the respondents are land grabbers within the meaning of Act XII/1982?
4. To what relief?

6. Before the Special Court the General Power of Attorney of the applicants was examined as P.W.1 and Exs.A1 to A34 were marked in support of their case. On behalf of the respondents, Respondents 6, 2 and 1 were examined as R.Ws.1 to 3 respectively and Exs.B1 to B26 documents were marked on their behalf. The Special Court on appreciation of the evidence on record found on issue No.1 that the applicants have not established their title to the application schedule land. On issue No.2, the special court found that the 1st respondent, who is the wife of Venkataswamy has title to the application schedule land. Accordingly on issue No.3, the Special court held that the respondents are not land grabbers within the meaning of Act XII of 1982, and dismissed L.G.C.No.16 of 1996. Assailing the said order of the Special Court dated 9.9.1998 on various grounds, the present writ petition has been filed.

7. We have heard Sri A. Sudershan Reddy, learned counsel for the petitioner and Sri M. Surendra Rao and Sri C.V. Mohan Reddy, learned counsel for the respondents as well as learned Government Pleader for Assignments.

8. The learned counsel for the petitioners submitted that the findings of the Special Court are perverse and not based on evidence on record and that the Special court grievously erred in concluding that the petitioners have not established their title to the application schedule land and accordingly pleaded that the impugned order is unsustainable and liable to be set aside. On the other hand the learned counsel for the respondents submitted that unless the title of the 1st petitioner to the extent of Ac.7.02 guntas of land said to have been acquired from Venkataswamy is established, petitioners 7 to 30 cannot derive any right and contended that since the petitioners have failed to produce any material to establish title of the 1st petitioner in respect of Ac.7.02 guntas of land, the findings of the Special court are unassailable and no interference is warranted by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

9. Having regard to the submissions made by the learned counsel for the petitioners and the respondents and on a perusal of the impugned order as well as the material on record, the following aspects which are necessary for determination of questions in issue are noted:

10. The application schedule land in L.G.C.No.16 of 1996 is an extent of 5752.66 sq. yards i.e., about 1.06 guntas situated in Survey No.87 of Old Bowenpally village. Admittedly the said land is an inam land. According to the applicants the application schedule land forms part of Ac.7.02 guntas which was acquired by the 1st applicant in the year 1974 out of the land held by the protected tenant "Venkataswamy", and for which subsequently Occupancy Certificate has been issued in favour of the 1st applicant under the provisions of the A.P. (Telangana Area) Abolition of Inams Act, 1955. The Occupancy Certificate dated 4.7.1980 has been marked as Ex.A2. The claim of the respondents is that the application schedule land does not form part of the land alleged to have been acquired by the 1st applicant by purchase, but it is part of the land to which the 1st respondent succeeded on the death of the protected tenant, Venkataswamy by virtue of the will dated 25.12.1966 executed by him. The said will dated 25.12.1966 in favour of the 1st respondent has been marked as Ex.B1.

11. Ac.7.02 guntas of land covered by Ex.A2, Occupancy Certificate, originally belonged to one Venkataswamy who was the protected tenant in respect of an extent of Ac.13.20 guntas of land. Out of the said land, Venkataswamy being the protected tenant purchased an extent of Ac.6.00 from the inamdar under a registered sale deed dated 26.10.1966 marked as Ex.B.7. The 1st applicant obtained a money decree in O.S.No.126 of 1973 on the file of the District Munsif West & South, Ranga Reddy district against the protected tenant Venkataswamy and in execution of the same an extent of Ac.6.00 belonging to the protected tenant Venkataswamy was sold in Court auction. The 1st applicant who was the decree holder in O.S.No.126 of 1973 became the auction purchaser of the said extent of Ac.6.00 with the leave of the Court. The applicants filed Ex.A31 dated 23.4.1974, which is the order of the executing Court directing delivery of the property in Court sale and Ex.A32 dated 4.5.1974 which is the delivery receipt in respect of Ac.6.00 of land purchased in Court auction.

12. The remaining extent of Ac.1.02 guntas of land covered by the Occupancy Certificate is also part of land initially held by protected tenant Venkataswamy. He sold the said extent of Ac.1.02 guntas to one Narayana Reddy under a registered deed in the year 1967. The 1st claimant claims to have purchased the said extent of Ac.1.02 guntas from the said Narayana Reddy under an agreement of sale dated 17.9.1974. The claim of the 1st applicant that he has been in possession of a total extent of Ac.7.02 guntas of inam land in Survey No.87 by the date of vesting as notified under the A.P. (T.A.) Abolition of Inams Act has been accepted by the competent authority after conducting due enquiry as prescribed and accordingly Ex.A2 Occupancy Certificate has been granted in favour of the 1st applicant. Ex.A33 dated 23.6.1980 is the order of R.D.O. Chevella issued under the provisions of A.P. (T.A.) Abolition of Inams Act. It shows that due enquiry has been conducted as to the possession of the 1st applicant as on the date of vesting after recording the statement of the protected tenant Venkataswamy to the effect that the said land of Ac.7.02 guntas forms part of the inam land held by him as protected tenant and accordingly Ex.A2

Occupancy Certificate has been granted u/s 8 read with Section 10 of the A.P. (T.A.) Abolition of Inams Act. The said Certificate has become final as no appeal was filed under the provisions of the said Act.

13. Further, it is pertinent to note that the respondents contended before the Special Court that the husband of the 1st respondent Venkataswamy sold an extent of Ac.1.02 guntas of land to one Narayana Reddy under a registered document bearing No.1680/67 and the said Narayana Reddy in his turn made the said land into plots and sold the same to different persons in the year 1970.

Subsequently the purchasers from Narayana Reddy filed O.S.Nos.166/82; 168/82 and 169/82 on the file of the District Munsif West & South Ranga Reddy district seeking decree for injunction alleging that the 1st applicant was interfering with their possession. The 1st applicant contested the said suits claiming title and possession to the suit schedule land on the basis of the Occupancy Certificate dated 4.7.1980 issued in his favour. His plea in the said suits that he purchased the suit schedule land from Narayana Reddy under an agreement of sale dated 17.9.1974 was not accepted by the Civil Court on the ground that the alleged agreement of sale executed by Narayana Reddy in favour of the 1st applicant was subsequent to the registered sale deeds executed in favour of the plaintiffs therein. Accordingly, the Civil Court held that since the agreement of sale is ineffective and invalid document, the 1st applicant cannot claim any title in respect of the said Ac.1.02 guntas of land under the Occupancy Certificate. The certified copies of the judgment in the said suits are filed before the Special Court by the respondents as Exs.B8 to B10.

It is matter of record that the Second Appeal Nos.514 to 516 of 1992 arising out of the said judgments are pending on the file of this Court. 14. That being the respective claims of the parties as supported by the evidence on record, on a perusal of the order under challenge, it is observed that the Special Court proceeded with the case on an assumption that the 1st applicant claims to have purchased an extent of Ac.1.02 guntas from the protected tenant Venkataswamy and refused to accept the same on the ground that the agreement of sale has not been exhibited. Further, the special Court while referring to Exs.B8 to B10 i.e., judgments of the Civil Court, held that in view of the finding of the Civil Court that the Court auction itself is subsequent to the sale of the property by Venkataswamy to Narayana Reddy, the title of Venkataswamy to the extent of Ac.1.02 guntas was divested even by the year 1967, and therefore, in the Court auction the 1st applicant acquired title only to the extent of Ac.4.38 guntas.

15. Accordingly the Special Court concluded that the applicants have not proved their case that they have title to the entire extent of Ac.7.02 guntas, but they could only prove that the 1st applicant purchased the property of an extent of Ac.4.38 guntas in the Court auction. The Special Court further held that the applicants 2 to 6 who are claiming property through the 1st applicant are only entitled to Ac.4.38 guntas and since the evidence of P.W.1 shows that they have already sold away Ac.6.00 to applicant Nos.7 to 30 and to other third parties,

there is no question of the applicants claiming title to the application schedule property which is in any event more than the 1st applicant's entitlement. Accordingly, on Issue No.1 the Special Court recorded a finding that the applicants have not established their title to the application schedule property.

16. So far as issue No.2 is concerned, the Special court without assigning reasons concluded that the 1st respondent has title to the application schedule property.

17. We are of the considered opinion that the above findings of the Special Court cannot be sustained since the same are neither based on facts pleaded nor supported by evidence on record.

18. Firstly it is to be noted that the claim of the 1st applicant as borne out of Exs. A33 & A34 is that he purchased Ac.1.02 guntas from Narayana Reddy under an agreement of sale, but not from the protected tenant Venkataswamy as assumed by the Special Court. It is true that the Civil court in Exs.B8 to B10 judgments held that the agreement of sale executed by Narayana Reddy in favour of the 1st applicant is ineffective and the 1st applicant cannot acquire any title in respect of Ac.1.02 guntas under the Occupancy Certificate, but the correctness of the said judgments and the entitlement of the 1st applicant in respect of Ac.1.02 guntas is the subject matter of the Second Appeals pending on the file of this Court. Further, as per the judgments of the Civil Court the said extent of Ac.1.02 claimed by the 1st applicant has been in possession and enjoyment of the plaintiffs in O.S.No.166 of 1982 & etc., and therefore, there cannot be any dispute about the identity of the said land and evidently the application schedule land does not form part of the said extent of Ac.1.02 guntas of land covered by the agreement of sale.

19. Then coming to the extent of Ac.6.00 purchased by the 1st applicant in the Court auction, it is pertinent to note that the Civil Court in Exs.B8 to B.10 recorded a finding that the schedule property of the said suits for which the plaintiffs claimed title through Narayana Reddy under registered sale deeds is part of Ac. 1.02 guntas of land said to have been purchased by the 1st applicant from Narayana Reddy under agreement of sale in the year 1974. The Civil court also held that the agreement of sale being ineffective the 1st applicant cannot claim title in respect of Ac.1.02 guntas under the Occupancy Certificate. In the said suits the Civil Court did not consider the extent of land purchased in the Court auction and did not hold that the Court auction conveyed title to the extent of Ac.4.38 guntas to the 1st applicant. Therefore the finding recorded by the Special Court that in the Court auction, the 1st applicant acquired title only to the extent of Ac.4.38 guntas but not Ac.6.00 cannot be said to be supported by the findings in Exs.B8 to B.10. As a matter of fact the sale deed executed by the protected tenant Venkataswamy in favour of Narayana Reddy was not exhibited either before the Special Court or before the civil Court and there is absolutely no evidence to show that Ac.1.02 guntas of land sold to Narayana Reddy forms part of Ac.6.00 of land put to Court auction. Hence the finding of the Special Court

that the 1st applicant acquired title in Court auction only to the extent of Ac.4.38 guntas is based on no evidence and cannot be sustained.

20. The Special Court proceeded further on the basis of the finding that the 1st applicant acquired title in Court auction only to the extent of Ac.4.38 guntas and basing on the oral evidence of P.W.1 concluded that after the applicants 2 to 6 sold away Ac.6.00 there is no question of claiming title to the application schedule property which is more than the applicant's entitlement. The said conclusion appears to be too technical. It can be seen that the applicants 7 to 30 who are the purchasers from applicants 2 to 6 under Ex.A17 to A30 deeds are on record. The Special Court failed to consider the said evidence.

21. It is also pertinent to note that for adjudication of the issue in question before the Special Court it is not necessary for the applicants to prove their entitlement to the entire extent of Ac.7.02 guntas covered by the Occupancy Certificate.

The subject matter of the L.G.C. is only about 5,752.66 sq. yards (about Ac.1.06 guntas), which according to the applicants is covered by the Occupancy Certificate and forms part of Ac.6.00 acres of land purchased by the 1st applicant in the Court auction. The application schedule property as described by the applicants has been identified by the Mandal Revenue Officer on inspection of the site. In his verification reports filed under Rule 6 of the A.P. Land Grabbing (Prohibition) Rules he stated that the information furnished by the applicants in their application regarding the extent, classification, location and boundaries of the application schedule land is found to be correct. Further the approved lay out has also been marked as Ex.A8. That apart the delivery warrant and "Panchanama" which mentioned boundaries of the land purchased in the Court auction have also been marked before the Special Court as Exs.A31 and A32.

The order of the Revenue Divisional Officer recording the factual aspects while issuing the Occupancy Certificate has been marked as Ex.A31. But none of the said documents have been considered by the Special Court. 22. The finding of the Special Court on issue No.2 as to the title of the 1st respondent is also not supported by evidence. The Special Court failed to take into consideration the fact that though the will, Ex.B1, was executed prior to the Court auction, it came into operation only on the death of the protected tenant-Venkataswamy long after the Court auction. Therefore, the crucial question to be considered is whether by the date of death of the protected tenant, the property covered by Ex.B1 will was in existence and whether the 1st respondent acquired any title to the said property under the will. Apparently the Special Court failed to go into the said question and decided issue No.2 in favour of the respondents.

23. The learned counsel for the petitioner Sri A. Sudarshan Reddy attacks the impugned order also on the ground that the Occupancy Certificate granted under the provisions of the A.P. (T.A.) Abolition of Inams Act, 1955 has become final and the jurisdiction of the Civil Court is ousted to go into the validity of the

Occupancy Certificate, and therefore, the learned counsel contends that it is not open for the Special Court to give a finding that the 1st applicant acquired title only to an extent of Ac.4.38 guntas under the Occupancy Certificate.

The learned counsel for the respondents contend that the jurisdiction of the Civil Court is barred only with regard to determination of nature and tenure of the inam land and since this is a case where the Occupancy Certificate itself is not challenged, but the question merely relates to the extent to which the 1st applicant acquired title in the court auction, it cannot be said that the jurisdiction of the Civil Court is excluded. The learned counsel for the respondents relied upon a decision of this Court in Lukraj Vs. Kishan Lal¹. The learned counsel for the petitioners brought to our notice that the said decision of the Division Bench of this Court has been reversed by the Supreme Court in Lukraj Vs. Kishan Lal², and accordingly contended that except the Forum constituted under the A.P. (T.A) Abolition of Inams Act, 1955, no other court can decide the validity of the Occupancy Certificate granted under the said Act.

24. We are of the view that the decisions relied upon by both the learned counsel are of no assistance for determination of the issue involved in the present case. The said decisions deal with adjudication of the pre-existing right, title and interest of the inamdar or any person having obtained inam land prior to the abolition of the Inams.

In the instant case, the question relates to the re-grant made under Sections 8 and 10 of the A.P. (T.A) Abolition of Inams Act, 1955 - hereinafter referred to as "the Act".

It can be seen that under Sections 5 to 8 of the Act every Kebiz-e-Kadim, permanent tenant, protected tenant and non-protected tenant in possession of the inam land immediately before the date of vesting are entitled to get registered as occupants. Section 10 of the Act empowers the Collector to conduct necessary enquiry as to the nature and history of the land in respect of which the inamdar, permanent tenant, protected tenant or non-protected tenant, claims to be registered as an occupant under Sections 4 to 8 of the Act and to decide in whose favour and in respect of which inam land the claims should be allowed. Section 24 of the Act provides for an appeal against the decision of the Collector u/s 10 and the decision of the appellant authority shall be final.

Section 25 of the Act enables the Collector to refer any case relating to the apportionment of compensation to the decision of Special Tribunal constituted for the purposes of the Act. Section 26 provides for Appeals to the special Tribunal and under Sections 27 & 28 Appeal and Revision are provided to the High Court against the orders specified there under. It is also pertinent to note that Section 29 of the Act provides for saving of the orders of Collector or Special Tribunal. The said Section 29 is extracted hereunder:

"29. Savings:-

Save as otherwise provided in this Act, no order passed by the collector or by the Special Tribunal under this Act shall be liable to be cancelled or modified except by the High Court as aforesaid or be questioned in any Court of law."

25. Therefore, the question is whether in the light of the aforesaid provisions, the Special Court has jurisdiction to decide the question relating to the extent acquired under the Occupancy Certificate granted by the competent authority under the A.P. (T.A.) Abolition of Inams Act, 1955. In this context it is necessary to extract Section 15 of the A.P. Land Grabbing (Prohibition) Act, 1982 which runs as follows:

15. Act to override other laws:-

"The provisions of this Act 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."

26. It can be seen that Section 15 starts with a non obstante clause thereby giving overriding effect to the provisions under the A.P. Land Grabbing (Prohibition) Act, 1982 over not only any other laws in force which are inconsistent, but also any custom, usage or agreement or decree or order of a Court or any other Tribunal or authority.

27. A.P. Land Grabbing (Prohibition) Act, 1982 is a special enactment and it was enacted with a view to make stringent provisions to arrest and curb unlawful activities of land grabbers who are indulging in grabbing, either by force or by deceit, the land belonging to the Government, local authority, Religious Charitable Institution or Endowment or any other private person. That being the object of the Act, u/s 7-A and Section 8 of the A.P. Land Grabbing (Prohibition) Act wide powers are conferred on the Tribunals and the special Court constituted under the said Act to try all cases relating to any alleged act of land grabbing or with respect to the ownership and title to or lawful possession of the land grabbed. It is well settled that the scope of a provision containing a non-obstante clause has to be interpreted taking into consideration the underlying object of the statute itself. If Section 15 of the A.P. Land Grabbing (Prohibition) Act which contains non obstante clause is given its true meaning bearing in mind the object with which A.P. Land Grabbing (Prohibition) Act enacted, it is clear that the Legislature is intended at conferring powers on the Special Court to go into the title and ownership of the land alleged to be grabbed irrespective of any order passed under the provisions of A.P. (T.A.) Abolition of Inams Act, 1955. Therefore, we are unable to accept the contention of the learned counsel for the petitioners regarding the jurisdiction of the Special Court.

28. At this stage the learned counsel for the respondents contends that this Court while exercising the jurisdiction under Article 226 of the constitution of India will not issue a writ of Certiorari to interfere with the findings of fact recorded by the Special Court constituted under the statute. It is well settled that a writ of Certiorari will lie where this Court comes to a conclusion that the

findings recorded are based on no evidence whatever and the decision is vitiated by error of law apparent on the face of the record.

In the instant case as expressed above, we are satisfied that the findings recorded by the Special Court are not based on the evidence on record and that the Special Court failed to take into consideration the evidence adduced by the parties. Therefore, in our considered opinion, this is a fit case where a writ of Certiorari shall be issued to quash the order under challenge. Accordingly, the impugned order dated 9.9.1998 in L.G.C.NO.16 of 1996 is quashed and the matter is remitted back to the Special Court with a direction to consider the matter afresh taking into consideration the entire evidence on record and to pass appropriate orders after hearing both the parties.

29. The writ petition is accordingly allowed. There shall be no order as to costs.