

(2008) 12 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3801 of 1996

Sekharamahanti Nagabhushanarao (Died) per L.R.

APPELLANT

Vs

Andhra University and Others

RESPONDENT

Date of Decision : 31-12-2008

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 10, 12, 2, 3, 4
Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 — Rule 6, 7
Constitution of India, 1950 — Article 12, 13(3), 226
General Clauses Act, 1897 — Section 3(31)

Citation : (2009) 2 ALT 260

Hon'ble Judges : Ghulam Mohammed, J;G. Bhavani Prasad, J

Bench : Division Bench

Advocate : V. Venkata Ramana and V.V.N. Narayana Rao, for the Appellant; M.V. Rajaram, SC for AU for Respondent No. 1 and A.G. for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—The Division Bench of this Court by order dated 28-9-2006 allowed this writ petition, which is in the following terms:

In view of the decision taken by this Bench in Jonnalagadda Samrajyam v. The Registrar Special Court Constituted Under The AP Land Grabbing (P) Act, 1982, in WP No. 19619 of 2002 and batch, dated 23-8-2006 (1996 (5) ALT 690 (D.B.)), the instant writ petition shall have to be disposed of in terms thereof. The applicant herein is statutory authority, namely, Andhra University. It filed an application u/s 7-A of the AP Land Grabbing (Prohibition) Act, 1982, against the writ petitioner. Such an application cannot be maintained in the decision of this Court in the judgment referred to hereinabove.

The writ petition is, therefore, allowed. But, under the circumstances, there shall be no order as to costs.

2. It is on record that the judgment in Jonnalagadda Samrajyam v. The Registrar

Special Court Constituted Under The AP Land Grabbing (P) Act, 1982, in WP No. 19619 of 2002 and batch, dated 23-8-2006 1996 (5) ALT 690 , was subject matter of review in Rev. WPMs No. 30191 of 2006 and batch. The Division Bench of this Court reviewed the judgment referred to above and allowed the review petitions, in result the judgment in Jonnalagadda Samrajyam's case has been reversed. Perhaps, in view of this, the applicant-Andhra University, inasmuch as, this writ petition filed by the respondent in the LGC was allowed following the decision in Jonnalagadda Samrajyam's case, and that decision has been reversed in review petitions, filed SLP being SLP (C) No. 4436 of 2007 before the Apex Court. The Apex Court by order dated 3-7-2007 passed the following order:

Counsel for the respondents is present on caveat and with the consent of the parties, we dispose of the matter at this stage. We have heard counsel for the parties. Delay condoned. Leave granted.

In the instant case, the High Court relying upon an earlier decision of the High Court held that the land belonging to the appellant-University cannot be the subject matter of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. It is brought to our notice that the aforesaid earlier judgment of the High Court has been reviewed by the High Court in Review Writ Petition Miscellaneous Petition Nos.30191/2006, 30098/2006 etc. etc. and has been reversed. A copy of the said judgment has been produced before us. In this view of the matter, we dispose of this appeal by setting aside the impugned judgment and order of the High Court and remitting the matter to the High Court to re-consider the matter on merits in the light of the judgment of the High Court in Review Writ Petition Miscellaneous Petition Nos.30191/2006, 30098/2006 etc. etc. including the question of applicability of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. It appears that an interim order was operating while the matter was pending before the High Court. The said order shall continue to operate unless the High Court vacates the same or modifies the same. The appeal is allowed. No order as to the costs.

3. Pursuant to the directions of the Apex Court in SLP, the matter is listed before us. The instant writ petition is filed against the order dated 2-1-1996 passed in LGC No. 31 of 1989 by the District Judge at Visakhapatnam.

4. The writ petitioner herein (since deceased) by LR is the respondent in the LGC and the Andhra University, Visakhapatnam, represented by its Registrar, is the applicant in LGC. For brevity, the parties hereinafter will be referred to, as they were arrayed in LGC. The applicant filed the LGC under Sub-section (1) of Section 7-A of the AP Land Grabbing (Prohibition) Act, 1982, (for short, "the Act") seeking eviction of the respondent-writ petitioner herein from the petition schedule mentioned land measuring an extent of 1080 sq. yards of site out of Ac.2-87 cents situate in Sy. No. 34 of Sivajipalem, Defence, Visakhapatnam, (for short, "the land in question") and deliver vacant possession of the same to the applicant.

5. As per the averments contained in the concise statement of facts, the land in question was acquired for the applicant Andhra University by the Special Tahasildar (Land Acquisition), Visakhapatnam, as per the proceedings in award No. 26 of 1969, dated 28-10-1969 and after the award, the land in question was delivered to the applicant on 12-12-1969. It is stated that ever since, the land in question is in possession and enjoyment of the applicant. That the respondent who purchased the adjacent land in Sy. No. 33 encroached into the land in question which is a triangular bit belonging to the applicant which measured 1080 sq. yards. That the respondent grabbed the land in question in the year 1981. That with regard to the same land, the respondent filed civil suit OS No.78 of 1989 on the file of IV Addl. District Munsif Visakhapatnam, against the applicant.

6. The respondent contested the matter by filing counter affidavit, inter alia, stating that the LGC filed by the applicant was not maintainable and that the applicant, in order to establish their title and possession, ought to have filed a civil suit. That the land in question does not belong to the applicant or the Government, but the respondent and his predecessors-in-title have been in possession and enjoyment of the land beyond the statutory period. That the applicant never paid any taxes in respect of the land in question and the applicant was not in possession of the land in question and, therefore, the LGC was liable to be dismissed.

7. Basing on the respective pleadings, the Court below framed the following point for consideration:

Whether the applicant has got title to the suit site, if so, the respondent is a land grabber and is liable to be evicted and deliver vacant possession of the same to the applicant?

8. Both sides adduced oral and documentary evidence. In support of the case of the applicant, two witnesses were examined and Exs. A-1 to A-5 were marked. On behalf of the respondent, the respondent himself got examined as RW-1 and marked Exs. B-1 to B-5.

9. The Court below considering the evidence adduced, both oral and documentary, allowed the LGC and directed the respondent (writ petitioner herein) to vacate and give vacant possession of the land in question to the applicant-Andhra University within two months from the date of the order, failing which the applicant was given liberty to get the respondent evicted from the land in question and take vacant possession of it by due process of law. Hence, this writ petition by the respondent.

10. Sri Vedula Venkataramana, learned Counsel appearing on behalf of Sri VVN Narayana Rao, learned Counsel for the petitioner, strenuously contended that the act of land grabbing can only be in respect of the land belonging to the Government, a local authority, a religious or charitable institution or endowment including a wakf or any other private persons and since the land in question is

being claimed by an University, not covered u/s 2(e) of the Act, the land grabbing case filed was not within the jurisdiction of the Special Tribunal. It is further contended that the provisions of the Act are not applicable to the case of the respondent-writ petitioner since 1927 the right, title and possession over the land in question by the respondent was never challenged by the applicant-Andhra University. It is also submitted that the possession over the land in question is beyond the statutory period and the respondent-writ petitioner has perfected title by adverse possession. In support of his contentions, learned Counsel relied on the decision in Mohd. Siddiq Ali Khan Vs. Shahsun Finance Limited, .

11. Learned Advocate General representing learned standing counsel for the respondent-Andhra University submitted that the expression "local authority" though not defined to include a University, in view of the expression of the definition "local authority" in Section 3(31) of the General Clauses Act, 1897 and also Article 304 of the Andhra Pradesh Financial Code, a University created under a statute comes within the expression "local authority". It is also submitted that in view of the financial aid granted to the University and there is deep and pervasive State control, the applicant-Andhra University is "State" within the meaning Article 12 of the Constitution and, therefore, the LGC filed is maintainable. It is further contended that the Special Tribunal having considered the evidence adduced by the applicant-University allowed the LGC case and there are no grounds warranting interference by this Court in exercise of jurisdiction under Article 226 of the Constitution. Reliance is placed on the decisions in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, and Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, .

12. Having heard the learned Counsel for the parties, and having perused the order passed in Rev. WPMP Nos. 30191 of 2006 and batch by the Division Bench of this Court, and also the material on record, the points that fall for our consideration in this case are:

1. Whether the applicant-Andhra University would come within the expression of "local authority" as contained in Section (e) of the Act and can maintain the LGC under Sub-section (1) of Section 7-A of the Act?
2. Whether the applicant-Andhra University has got title to the land in question; &
3. Whether the respondent (writ petitioner) is land grabber, as alleged by the applicant-Andhra University?

Point No. 1:

13. Before dealing with points 2 and 3, it is trite to render a finding on the 1st point. Clauses (cc), (d), (e), (g) & (h)(i-b) of Section 2 of the Act reads thus:

2. Definitions: - In this Act, unless the context otherwise requires,

(cc) "land belonging to a private person" means any land belonging to

(i) an evacuee;

- (ii) a military personnel; or
- (iii) any other private individual.

The value or the extent of which or the nature of the evil involved shall be of substantial nature or in the interest of justice required".

(d) "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 above mentioned acts; and also includes the successors in interest;

(e) "land grabbing" means 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 a 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 licences 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 terms "to grab land" shall be construed accordingly;"

(g) "person" includes a group or body of persons, an association, or a religious or charitable institution or endowment, whether incorporated or not;

(h) (i-b) "Special Tribunal" means a Court of the District Judge having jurisdiction over the area concerned and includes Chief Judge, City Civil Court, Hyderabad"

14. Clause (cc): the expression "land belonging to a private person" brings within the ambit of the said expression an evacuee, military personnel and any other private individual. The definition of the expression "land belonging to a private person" is not exhaustive as it is to be read in conjunction with the definition of "person" as given in Clause (g) of Section 2 of the Act which includes a group or body of persons, an association, or a religious or charitable institution or endowment, whether incorporated or not.

15. Clause (d) the expression "land grabber" takes in its fold, (i) a person or a group of persons who commits land grabbing; (ii) a person who gives financial aid to any person for (a) taking illegal possession of the lands, or (b) construction of unauthorised structures thereon; (iii) a person who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation; (iv) a person who abets the doing of any of the above mentioned acts; and (v) the successors in interest of such a person.

16. Clause (e) the expression "land grabbing" includes; (i) 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; (ii) such grabbing must be without any lawful entitlement and with a view to, (a) illegally taking possession of such lands; or (b) to enter into or create illegal tenancies, lease and licences agreements or any other illegal agreements in respect of such lands; or (c) to construct unauthorised structures thereon for sale or hire; or (d) to give such lands to any person on rental or lease and licence basis for construction, or use and occupation of unauthorised structures.

17. It is the case of learned Counsel appearing for the respondent-writ petitioner that the applicant-University not being specified in Clause (e) of Section 2 of the Act, the Special Tribunal has no jurisdiction over the subject matter and the provisions of the Act are not applicable to the case. In other words, the learned Counsel seeks to contend that the act of land grabbing is to be confined only to the cases of land grabbing by the land grabber in respect of the lands belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private persons.

18. Though the definition of the expression "land belonging to a private person" is sought to be explained in Clause (cc), the expression "a local authority", with which we are concerned, is not defined in the Act. In such situations, recourse shall have to be taken to other modes to know the meaning of the expression "a local authority" appearing in Clause (e) of Section 2 of the Act. According to Webster's Dictionary "Authority" means a person or body exercising power to command. In the context of Article 12 of the Constitution, the word "authority" means the power to make laws, orders, regulations, bye-laws, notifications etc. which have the force of law and power to enforce the laws. Article 12 of the Constitution the expression "other authorities" is used after mentioning a few of them, such as, the Government, Parliament of India, the Government and Legislature of each of the States and local authorities. In *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, , the Apex Court held that the expression "other authorities" is wide enough to include all authorities created by the Constitution or statute on whom powers are conferred by law.

19. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the Apex Court has held that if a body is an agency or instrumentality of government it is an "authority" within the meaning of Article 12 of the Constitution. But what is the test to decide whether a body is an agency or instrumentality of government, the Court laid down the following tests:

1. financial resources of the State is the chief funding source i.e. if the entire share capital of the Corporation is held the Government, 2. existence of deep and pervasive State control, 3. functional character being governmental in essence i.e. if the functions of the corporation are of public importance and closely related to governmental functions, 4. if a department of Government is transferred to a corporation, 5. whether the corporation, enjoys monopoly status which is State conferred or State protected. However the Court said that these tests are not

conclusive but illustrative only.

20. "Local Authorities" as defined in Section 3(31) of the General Clauses Act refers to authorities like municipalities, district boards, panchayats or other authority legally entitled to, or entrusted by the Government with the control of management of a municipal or local fund. In *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, the Apex Court while considering Section 3(31) of the General Clauses Act held that Delhi Development Authority is a local authority. Para 2 of judgment reads thus:

An authority, in order to be a local authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. The authorities must have separate legal existence as Corporate bodies. They must not be mere Governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the areas. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy effecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. Next, they must be entrusted by Statute with such Governmental functions and duties as are usually entrusted to municipal bodies. Broadly, they may be entrusted with the performance of civic duties and functions which would otherwise be Government duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees. This may be in addition to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority.

21. Article 304 clause (iii) of the AP Financial Code deals with Education Funds i.e. the fee funds of Universities etc. Article 306 of the AP Financial Code regulates the payment of the various classes of grants to local bodies, e.g., grants for hospitals and dispensaries, grants for the maintenance of roads and educational grants, is governed by the general or special orders of the Government in regard to each class of grant.

22. In the instant case the applicant-Andhra University is a University created under a statute, fiscal funding, existence of deep and pervasive State control is present. The functions of the University are imparting higher education in various fields to the aspiring students. The Government of AP has dominant role and the Andhra University function under the supervision of the Government.

23. In *Umesh v. V.N. Singh* AIR 1968 Pat 3 (F.B.). The Full Bench of Patna High

Court, held that Patna University is "a State" for the purpose of Article 12 of the Constitution as it is a public statutory body created by the appropriate Act of the Legislature and it has been empowered to make Statutes, Ordinances and Regulations by the Legislature and the laws made by the University in exercise of these powers will come within the definition of "law" as given in Article 13(3)(a) of the Constitution, and consequently they must conform to the fundamental rights provided in Part III of the Constitution.

24. In the light of the above analysis, it is to be held that Andhra University comes within the meaning of the term "local authority" as used in Clause (e) of Section 2 of the Act and the point is answered accordingly.

Points 2 & 3:

25. It is settled proposition of law that when an activity of land grabbing is complained of, the aggrieved party is at liberty to approach the Special Tribunal or the Special Court, as the case may be, but not the civil Court. If an act of land grabbing is not complained of by the party, in view of the language used in Clause (e) of Section 2 of the Act, the Special Tribunal or the Special Court, as the case may be, cannot get jurisdiction to deal with the matter. Therefore, the act of land grabbing is the criteria which determines the jurisdictional issue in between the civil Court and the special Tribunal or the Special Court, as the case may be, under the Act. This jurisdictional aspect is certainly not in respect of a territorial jurisdiction or pecuniary jurisdiction, but jurisdictional aspect over the subject matter of the dispute.

26. Section 3 of the Act declares the land grabbing to be an offence punishable under the Act; Section 4 of the Act prohibits land grabbing; Section 5 of the Act prescribes the penalty for other offences in connection with land grabbing; Section 6 of the Act deals with the offences by the Companies; and Section 7 of the Act provides for constitution of Special Courts.

27. Section 9 of the Act invests the powers of the Civil Courts as well as the Court of Session in the Special Court and makes the provisions of the CPC as well as the Code of Criminal Procedure applicable to the proceedings before the Special Court, save as expressly provided under the Act. Section 10 of the Act deals with the burden of proof; and Section 12 of the Act deals with sanction for prosecution of the offence under the Act.

28. In Mohd. Siddiq Ali Khan Vs. Shahsun Finance Limited, ;the Full Bench of this Court observed that Special Court may either issue suo motu or on application take cognizance of and try every case arising out of any alleged act of land grabbing. The Special Court is also conferred with the power to try with respect to the ownership and title to, or lawful possession of, the land grabbed. It is not entitled to try every case involving disputes as to the ownership and title to any land but is entitled to go into the question of ownership and title to, or lawful possession of, the land grabbed. The Special Court is conferred with the exclusive jurisdiction to try every case arising out of any alleged act of land grabbed. The

jurisdiction of the ordinary Civil Courts to that extent is taken away by the Special Court. That for the purpose of taking cognizance of the case, the Special Court is required to consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved or in the interest of justice required or any other relevant matter, for which purposes the Special Court is required to hear the petitioner. If the Special Court is of the opinion that if any case brought before it, is not a fit case to be taken cognizance of, it may return the same for presentation before the Special Tribunal. The Special Court is duty bound to reject any application filed before it, if in its opinion, such application, prima facie, is frivolous or vexatious one. It is invested with exclusive jurisdiction to try all offences punishable under the Act.

29. Rule 6 of the Rules framed under the Act provides that every application filed under Sub-section (1) of Section 8 of the Act or every case taken cognizance of suo motu by the Special Court may be referred for local inspection or verification or both by the Mandal Revenue Officer having jurisdiction over the area or by any other Officer of the Government authorized by the Court in that behalf. The Mandal Revenue Officer to whom the application has been referred shall make or cause to be made an inspection or verification or both, as soon as may be practicable and shall submit a full and complete report with reference to Revenue Records and facts on grounds as to the following:

- (i) the correctness of the statements made in the application with regard to columns 1 to 15 and 19 in Form-1;
- (ii) the facts relating to ownership, actual possession and use of the land concerned; and
- (iii) such other particulars and information as would be useful to the Court to arrive at a correct decision on the claims made in the application.

30. The Mandal Revenue Officer to whom the application has been referred shall also furnish copies of the extracts of the Government records to show the survey number and sub-division number and proof of possession, ownership and use of the land and the payment of dues to the Government. A copy of the report may be furnished to the applicant, to the respondents and other persons, if any having interest in the land on payment of copying charges and this Rule is required to be read along with Section 8 and Section 7-A of the Act, which deal with procedure and powers of the Special Courts to take cognizance of and try every case arising out of any alleged act of land grabbing.

31. The report submitted by the Mandal Revenue Officer, obviously, renders valuable assistance to the Special Court in order to decide as to whether the application filed is a fit case to be taken cognizance of. In our considered opinion, reference of every application under Sub-section (1) of Section 8 of the Act or an application filed under Sub-section (1) of Section 7-A of the Act, for local inspection or verification or both by the Mandal Revenue Officer before the Special Court or the Special Tribunal takes cognizance of the case is a mandatory

requirement and it cannot be bypassed.

32. In *Shalivahana Builders Private Limited and Another Vs. Sri Ganapathy Co-operative Housing Society and Others*, case, the Division Bench of this Court held that "every application shall have to be scrutinized in order to decide as to whether the same is frivolous or vexatious one. Unless the Court comes to the conclusion that it is a fit case to be taken cognizance of, it cannot proceed further in the matter. In order to decide as to whether the application filed prima facie is frivolous or vexatious and in order to enable the Special Court to form its opinion the Court may look into the report of the Mandal Revenue Officer having jurisdiction over the area since such report essentially contains the details of the correctness of the statements made in the application and the facts relating to ownership, actual possession and user of the land concerned, etc. It is in this background the verification of application and submission of the report by the Mandal Revenue Officer or the authorized officer, as the case may be, are to be considered as mandatory requirements. In the absence of such report the Court may not be in a position to form its opinion in order to decide as to whether the application filed is a fit case to be taken cognizance of. The objections preferred by the interested persons if any pursuant to notice issued in accordance with the Rule 7 may also have to be taken into consideration for the purposes of forming the opinion by the Special Court that it is a fit case to be taken cognizance of."

33. Admittedly, in this case the Special Tribunal, as required under Rule 6 of the Rules framed under the Act, before taking cognizance of the case, has not referred the case for local inspection or verification by the Mandal Revenue Officer having jurisdiction over the area or by any other Officer of the Government authorized by the Court in that behalf. The decision of the Full Bench of this Court in *Mohd Siddiq Ali Khan's case Mohd. Siddiq Ali Khan Vs. Shahsun Finance Limited*, is to the effect that the Special Court or the Special Tribunal, as the case may be, is required to follow the procedure under Rule 6 of the Rules framed under the provisions of the Act and it is mandatory. Inasmuch as that procedure was not followed by the Special Tribunal, in the instant case, we are of the view that the matter has to be remanded to the file of the Special Tribunal for following the rules made under the provisions of the Act and render a finding based on the reports of the Mandal Revenue Officer having jurisdiction over the area or by any other Officer of the Government authorized by the Court in that behalf. In this view of the matter, we refrain to record any opinion on points 2 and 3.

34. In the result, the writ petition is allowed and the matter is remanded to the file of the Special Tribunal for considering afresh in the light of the above observations and to pass orders in accordance with law. No order as to costs.