

(2010) 11 AP CK 0074

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 23212 and 23241 of 2010

Shaik Maqsood Ali and others

APPELLANT

Vs

Special Court under A.P. Land Grabbing (Prohibition) Act,
Hyderabad and others

RESPONDENT

Date of Decision : 13-11-2010

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 6(2), 7, 7A, 8, 9
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2010) 11 AP CK 0074

Hon'ble Judges : V. Eswaraiah, J;B.N. Rao Nalla, J

Bench : Division Bench

Advocate : A Pulla Reddy and Abhishek Reddy, for the Appellant; Y. Ratnakar, Counsel for the Respondent No. 4 in WP No. 23241 of 2010, for the Respondent

Judgement

V. Eswaraiah, J.—These two writ petitions arise out of the common order dated 30.8.2010 made in IA No.884 of 2010 in LGC No. 11 of 1992 and IA No.885 of 2010 in LGC No.20 of 1992 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act (hereinafter referred to as the Special Court). The petitioners in WP No.23241 of 2010 are the petitioners in IA No.884 of 2010 in LGC No.11 of 1992 and they are the respondent Nos. 1 and 2 in the said L.G.C; whereas, the petitioners in WP No.23212 of 2010 are the petitioners in IA No.885 of 2010 in LGC No.20 of 1992 and they are respondent Nos.6 to 11 in the said LGC No.20 of 1992. Both the said IA Nos.884 and 885 of 2010 are filed in the pending LGC Nos.11 and 20 of 1992 filed u/s 8-2(A) of the A.P. Land Grabbing (Prohibition) Act (hereinafter referred to as the Act) with a prayer to reject the L.G.Cs. as not maintainable, as the very taking of cognizance of the cases was without calling for the verification report from the Mandal Revenue Officer and, therefore, the cognizance taken by the Special Court is illegal, bad and contrary to the provisions of the Act and the judgments of this Court. The said two applications are dismissed by the impugned order against which these two writ petitions are filed.

2. The facts and contentions in both the cases are similar and as such both the writ petitions are disposed of by this common order.

3. It is case of the petitioners herein that the land grabbing cases filed by the applicants are not maintainable in law on the facts of the cases and the Special Court has taken cognizance of the cases without calling for the verification report from the Mandal Revenue Officer under Rule 6(2) of the Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 (hereinafter referred to as the Rules) made under the Act and, therefore, the said action of the Special Court is contrary to law as well as Full Bench judgment of this Court in Mohd. Siddiq Ali Khan v. M/s. Shahsun Finance Limited, Chennai, 2005 (2) ALD 675 (FB) = 2005 (2) ALT 503 (FB) and various other judgments of this Court as well as the Apex Court.

4. It is stated that the factum of calling for the verification report of the Mandal Revenue Officer before taking cognizance of the cases has recently come to the knowledge of the petitioners when they filed Copy Application No.838 of 2010 dated 24.6.2010 and the same was returned by the Copying Section with the endorsement Mandal Revenue Officer report is not filed, hence, CA is returned and, as such, they have filed the said petitions questioning the maintainability of the L.G.Cs. Though various other grounds also have been urged, but we are of the opinion that they need not be dealt with to answer the issue involved in the present cases, as the said contentions relate to merits of the cases.

5. Counters have been filed opposing the said applications stating that the said Full Bench Judgment has no application to the facts of the case, as the Special Court has already taken cognizance of the cases and thereafter the trial has commenced and the evidence was recorded and, in fact, the said L.G.Cs. were dismissed earlier against which the applicants in the said L.G.Cs. have filed WP Nos.23187 of 1996 and 22181 of 1996 on the file of this Court and a Division Bench of this Court by order dated 26.6.2009 set aside the judgment of the Special Court in both the cases and remitted back to the Special Court with a direction to afford opportunity to each of the parties to lead further evidence and thereafter hear and decide the matter afresh and the said judgment has become final. Pursuant to the said judgment, remitting the matters, further evidence was also let in and, therefore, the Special Court cannot go beyond the scope of the remand order passed by this Court. It is further stated that the petitioners have not raised the issue of maintainability of the L.G.Cs. at any point earlier and, as such, they are estopped from raising the plea of maintainability of L.G.Cs. for want of the report of Mandal Revenue Officer, after the matters are remanded by this Court. It is further stated that the Special Court has got power to call for the report from the Mandal Revenue Officer under Rule 6(2) of the Rules. It is stated that this Court has also considered the rival claims of the parties on merits and remitted the matters to the Special Court for disposal afresh and, therefore, the cases being eighteen years old, the petitions does not deserve any consideration and are liable to be dismissed.

6. The Special Court by the impugned order dated 30.8.2010, has considered the

claim as to whether the Mandal Revenue Officer's report is a must before taking cognizance of the case and after taking cognizance without report of the Mandal Revenue Officer, whether the proceedings vitiate.

7. It is contended by the learned Counsel for the respondents that the order of the Special Court taking cognizance cannot be recalled at this stage, when so much of water has flown under the bridge. Assailing the judgment rendered by the Special Court in the year 1996 for adducing evidence by both the parties, the matter was carried to the High Court and the High Court by a common order dated 26.6.2009, remanded both the writ petitions to the Special Court and, therefore, if the order taking cognizance is recalled, it would make the entire previous exercise futile and wasteful and it would set at knot all the proceedings including the remand order. The judgment of the High Court as well as the Special Court had become final and the remand order is binding on both the parties.

8. On the aforesaid contentions, the Special Court has observed that the cognizance was taken in the year 1992 and the judgments were pronounced on 12.7.1996, against which the writ petitions filed by the applicants before the L.G.Cs. were allowed by the High Court on 26.6.2009 remitting the matters back to the Special Court and thus eighteen years have elapsed after filing the L.G.Cs. The silence on the part of the petitioners in not bringing to the notice of the High Court, reflects the conduct of the petitioners, as a result of which the Special Court has distinguished the judgment of the Full Bench as well as the judgment in the case of Sri Rai Bahadur Dwarakanath Kakar Public Trust and another v. Special Court under A.P. Land Grabbing (Prohibition) Act, 1982, Hyderabad and others, 2010 (5) ALD 23 (DB). It is stated that only after the Full Bench judgment (1st supra), the Special Court began to call for the report from the Mandal Revenue Officer before taking cognizance of the cases and, as such, the compliance of Rule 6(2) of the Rules is held to be mandatory one. Rule 6(2) is procedural in nature and the procedural laws shall not generally be applied retrospectively and, therefore, the Full Bench judgment has no retrospective effect. However, the earlier orders that were passed will merge in the order passed by the High Court. If the cognizance already taken is recalled, it would have far-reaching affect and totally nullify all the proceedings that took place subsequent to the taking of cognizance of the cases and the entire labour put in by the Special Court in recording the evidence, hearing arguments and pronouncing the judgments by the Special Court would go waste and the applicant would be thrown back to the stage of institution. Accordingly, the Special Court was of the opinion that the cognizance already taken without calling for the report of the Mandal Revenue Officer, cannot be recalled as it would render all the proceedings a nullity more particularly when it would also amount to setting aside the remand order passed by this Court. The Special Court has advised the petitioners to initiate appropriate proceedings before the High Court in view of the ratio in Sri Rai Bahadur Dwarakanath's case (supra). Observing so, the Special Court dismissed the petitions.

9. We have heard the Counsel on either side at length.

10. To resolve the controversy, it is apposite to reproduce Sections 7, 7A and 8 and Rule 6 of the Rules:

7. Constitution of Special Courts:-(1) The Government may, for the purpose of providing speedy enquiry into any alleged act of land grabbing, and trial of cases in respect of the ownership and title to, or lawful possession of, the land grabbed, by notification, constitute a Special Court.

(2) A Special Court shall consist of a Chairman and four other members, to be appointed by the Government.

(3) The Chairman shall be a person who is or has been Judge of a High Court and of the other four members, two shall be persons who are District Judges (hereinafter referred to as Judicial Members and the other two members shall be persons who hold or have held a post not below the rank of a District Collector (hereinafter referred to as Revenue Members):

Provided that the appointment of a person who was a Judge of a High Court as the Chairman of the Special Court shall be made after consultation with the Chief Justice of the High Court concerned;

Provided further that where a sitting Judge of a High Court is to be appointed as Chairman, such appointment shall be made after nomination by the Chief Justice of the High Court concerned, with the concurrence of the Chief Justice of India.

(4) The Government from time to time likewise reconstitute the Special Court constituted under sub-section (1) or may, at any time abolish such Special Court.

(4-A) The Chairman or other member shall hold office as such for a term of two years from the date on which he enters upon his office, or until the Special Court is reconstituted or abolished under subsection (4), whichever is earlier.

(4-B) (a) Subject to the other provisions of this Act, the jurisdiction, powers and authority of the Special Court may be exercised by Benches thereof one comprising of the Chairman, a Judicial Member and a Revenue Member and the other comprising of a Judicial Member and a Revenue Member.

(b) Where the Bench comprises of the Chairman, he shall be the Presiding Officer of such a Bench and where the Bench consists of two members, the Judicial Member shall be the Presiding Officer.

(c) It shall be competent for the Chairman either suo motu or on a reference made to him to withdraw any case pending before the Bench comprising of two members and dispose of the same or to transfer any case from one Bench to another Bench in the interest of justice.

(d) Where it is reasonably apprehended that the trial of Civil liability of a person accused of an offence under this Act, is likely to take considerable time, it shall be competent for the Chairman to entrust the trial of the criminal liability of such

offender to another Bench in the interest of speedy disposal of the case.

(e) Where a case under this Act is heard by a Bench consisting of two members and the members thereof are divided in opinion, the case with their opinions shall be laid before another Judicial Member or the Chairman and that member or Chairman, as the case may be after such hearing as he thinks fit, shall deliver his opinion and the decision or order shall follow that opinion.

(5).....

(5A).....

(5B).....

(5C).....

(5D)(i)to(iii).....

(6).....

11. Section 7A which deals with the Special Tribunals and its powers, reads as under:

7-A. Special Tribunals and its powers, etc.:- (1) Every Special Tribunal shall have power to try all cases not taken cognizance of by the Special Court relating to any alleged act of land grabbing, or with respect to the ownership and title to, or lawful possession of the land grabbed whether before or after the commencement of the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987 and brought before it and pass such orders (including orders by way of interim directions) as it deems fit.

Provided that if, in the opinion of the Special Tribunal, any case brought before it is prima facie frivolous, or vexatious it shall reject the same without any further enquiry:

Provided further that if in the opinion of the Special Tribunal any case brought before it is a fit case to be tried by the Special Court it may for reasons to be recorded by it transfer the case to the Special Court for its decision in the matter.

(2) Save as otherwise provided in this Act, a Special Tribunal shall, in the trial of cases before it, follow the procedure prescribed in the Code of Civil Procedure, 1908

(3) An appeal shall lie, from any judgment or order not being interlocutory order of the Special Tribunal, to the Special Court on any question of law or of fact. Every appeal under this sub-section shall be preferred within a period of sixty days from the date of judgment or order of the Special Tribunal:

Provided that the Special Court may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of sixty days.

(4) Every finding of the Special Tribunal with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing, and of the persons who committed such land grabbing and every judgment of the Special Tribunal with regard to the determination of the title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land:

Provided that the Special Tribunal shall by notification specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Tribunal from any person including the custodian of evacuee property within the period specified therein will be considered by it;

Provided further that where the custodian of evacuee property objects to the Special Tribunal taking cognizance of the case, the Special Tribunal shall not proceed further with the case in regard to such property;

Provided also that the Special Tribunal shall cause a notice of taking cognizance of the case under the Act served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land.

(5) It shall be lawful for the Special Tribunal to pass an order in any case decided by it, awarding compensation in terms of money for wrongful possession, which shall not be less than an amount equivalent to the market value of the land grabbed as on the date of the order and profits accrued from the land payable by the land grabber to the owner of the grabbed land and may direct the redelivery of the grabbed land to its rightful owner. The amount of compensation and profits so awarded and cost of redelivery, if any, shall be recovered as an arrear of land revenue if the Government are the owner and as a decree of a Civil Court, in any other case:

Provided that the Special Tribunal shall, before passing an order under this subsection, give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard and consider every such representation and evidence.

(6) Any case, pending before any Court or other authority immediately before the commencement of the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987 as would have been within the jurisdiction of a Special Tribunal, shall stand transferred to the Special Tribunal, having jurisdiction, as if the cause of action on which such suit or proceeding is based had arisen after such commencement.

(7) Every case brought before the Special Tribunal shall be disposed of finally by the Special Tribunal, as far as possible, within a period of six months from the date of its having been brought before it.

(8) The Special Tribunal shall have all the powers of a Civil Court for purposes of

review.

12. Section 8 of the Act, which prescribes the procedure and powers of the Special Court, reads as under:

8. Procedure and powers of the Special Courts:-

(1) The Special Court may, either suo motu or on application made by any person, officer or authority take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit;

(1-A) The Special Court shall, for the purpose of taking cognizance of the case, 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:

Provided that the Special Court shall not take cognizance of any such case without hearing the petitioner.

(2) Notwithstanding anything in the Code of Civil Procedure, 1908 the Code of Criminal Procedure, 1973 or in the Andhra Pradesh Civil Courts Act, 1972, (Act 9 of 1972) any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land grabbed under this Act, [shall, subject to the provisions of this Act, be triable in the Special Court] and the decision of Special Court shall be final.

(2-A) If the Special Court is of the opinion that 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:

Provided that if, in the opinion of the Special Court, any application filed before it is prima facie frivolous or vexatious, it shall reject the same without any further enquiry;

Provided further that if on an application from an interested person to withdraw and try a case pending before any Special Tribunal the Special Court is of the opinion that it is a fit case to be withdrawn and tried by it, it may for reasons to be recorded in writing withdraw any such case from such Special Tribunal and shall deal with it as if the case was originally instituted before the Special Court.

(2-B) Notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act.

(2-C) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed. The evidence admitted during the criminal

proceeding may be made use of while trying the civil liability. But additional evidence, if any, adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability. Any person accused of land grabbing or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence or oath in disproof of the charge made against him or any person charged together with him in the criminal proceeding:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any of the parties or the special Court or give rise to any presumption against himself or any person charged together with him at the same proceeding.

(3).....

(4) Every case under sub-section (1) shall be disposed of finally by the Special Court, as far as possible, within a period of six months from the date of institution of the case before it.

(5).....

(6) Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land:

Provided that the Special Court shall, by notification specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Court from any person including the custodian of evacuee property within the period specified therein will be considered by it;

Provided further that where the custodian of evacuee property objects to the Special Court taking cognizance of the case, the Special Court shall not proceed further with the case in regard to such property;

Provided also that the Special Court shall cause a notice of taking cognizance of the case under the Act, served on any person known or in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land.

(7) It shall be lawful for the Special Court to pass such order as it may deem fit to advance the cause of justice. It may award compensation in terms of money for wrongful possession of the land grabbed which shall not be less than an amount equivalent to the market value of the land grabbed as on the date of the order and profits accrued from the land payable by the land grabber to the owner of the grabbed land and may direct re-delivery of the grabbed land to its rightful owner. The amount of compensation and profits, so awarded and costs of re-

delivery, if any, shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a civil Court, in any other case to be executed by the Special Court:

Provided that the Special Court shall, before passing an order under this sub-section, give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard, and consider such representation and evidence.

(8) Any case, pending before any Court or other authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court as if the cause of action on which such suit or proceeding is based had arisen after the constitution of the Special Court.

13. Rule 6 of the Rules, around which the entire lis in the present writ petitions revolves, reads as under:

6. Verification of Application:- (1) 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 or an application filed under sub-section (1) Section 7A of the Act, before the Special Tribunal, 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 authorised by the Court in this behalf.

(2) The Mandal Revenue Officer or the other Officer to whom the application has been referred under sub-rule (1) 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 within two weeks from the date of receipt of order with reference to Revenue Records and facts on ground 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 ownerships, 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.

Provided that the said Report is not required to be submitted in respect of the application filed by The Mandal Revenue Officer.

(3) The Mandal Revenue Officer or the other officer to whom the application has been referred under sub-rule (1) shall also furnish copies of the extracts of the Government records to show the survey number and subdivision number and proof of possession, ownership and use of the land and the payment of dues to the Government.

(4) A copy of the report referred to in sub-rule (2) may be furnished to the

applicant, to the respondents and other persons, if any having interest in the land on payment of copying charges.

14. It is not in dispute that earlier the Special Court dismissed the said L.G.Cs. filed by the respondents by order dated 12.7.1996 against which the applicants before the Special Court filed WP Nos.21387 and 22181 of 1996, which are disposed of by a Division Bench of this Court by order dated 26.6.2009 and the operative portion of the said judgment is extracted as under:

".....We are, therefore, of the view that the impugned judgments of the Special Court are liable to be set aside and both the land grabbing cases deserves to be remitted back so that the Special Court would be in a position to appreciate the oral and documentary evidence produced by either of the parties and duly consider the same and decide both the land grabbing cases, in accordance with law, afresh. Though the parties have led sufficient evidence, both oral and documentary, in view of the fact that several years are passed by, after the impugned judgments passed by the Special Court, there maybe subsequent developments and further evidence available, which the parties would like to bring on record in support of their respective cases, the Special Court may, therefore, grant one opportunity to each party to lead further evidence and thereafter, hear and decide the matters afresh. We also make it clear that we have refrained from giving any finding or making any observation only to ensure that the Special Court is not prejudiced while reconsidering the matter. However, we make it clear that any observation made herein shall not influence the Special Court in hearing and deciding the matter afresh, in accordance with law.

The writ petitions are accordingly allowed and both the land grabbing cases are remitted to the Special Court accordingly. Since both the land grabbing cases are sufficiently old, we hope and trust that the Special Court would endeavour to hear and decide the same at the earliest, preferably within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs....."

15. It is true that earlier the L.G.Cs. filed by the respondents - claimants were dismissed recording various findings against them based on the evidence available on record and the High Court while setting aside the judgments in L.G.Cs. remanded the matter back to the Special Court to consider the evidence available on record by giving further opportunity to both of them for leading further evidence and thereafter to hear and decide the matter afresh, observing that any observations made by the High Court shall not prejudice it while reconsidering the matter. Therefore, both the L.G.Cs. are pending on the file of the Special Court.

16. The core question that arises for consideration is whether the report of the Mandal Revenue Officer is mandatory requirement for taking cognizance of the case.

17. In fact, a perusal of the impugned order indicates that the Special Court is of

the opinion that Rule 6(2) requirement is mandatory and the decisions of this Court subsequent to the Full Bench judgment are also to the same effect, though distinguished the same, observing that such a requirement is practised by the Special Court after Full Bench judgment only and never before. But, however, observed that it is for the petitioners herein to approach the High Court for appropriate relief in view of the decision in Sri Rai Bahadur Dwarakanth's case (supra).

18. The Full Bench of this Court (first supra) has held that mere numbering of the application or registration of the case does not amount to taking cognizance of the case. Registering the case and assigning a number is a ministerial act, which cannot be equated to that of taking cognizance by a Court of competent jurisdiction, which requires intense application of mind to the facts. For taking cognizance of the case, be it civil or criminal, is not a matter of course. The Full Bench further held that the statute does not enjoin Special Court to take cognizance of every case and try the case brought before it except the one which it rejects.

19. Section 9 of the Act makes the provisions of the Code of Civil Procedure, A.P. Civil Courts Act and the Code of Criminal Procedure applicable to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a civil Court or as the case may be a Court of Sessions and shall have all the powers of Civil and Court of Sessions. It is clear that the Special Court is entitled to exercise the power under Order VII Rule 11 CPC and reject the application, if the allegations made therein do not disclose cause of action and the case is frivolous and vexatious one. The application filed u/s 8 of the Act, which does not disclose cause of action would be a frivolous application liable to be rejected without any further enquiry.

20. The Apex Court in Saleem Bhai and others v. State of Maharashtra and others, 2003 (2) ALD 84 (SC), has held that the trial Court can exercise the power under Order VII Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant or at any times before the conclusion of the trial. For the purpose of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file, the written statement without deciding the application under Order VII Rule 11 CPC, cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. Therefore, it is always open to the Special Court to reject the application filed u/s 8 of the Act, which does not disclose cause of action, as be a frivolous application without any further enquiry.

21. The next question that fell for consideration of the Full Bench was whether the Special Court is required to follow the procedure under Rules 6 and 7 of the Rules before taking cognizance of a case. This question integrally intertwined with the question as to whether the statute enjoins the Special Court and the Special

Tribunal to take cognizance of every case and try all cases brought before it.

22. On the aforesaid question, the Full Bench held that on reference of every application under sub-section (1) of Section 8 of the Act or on application filed under sub-section (1) of Section 7A of the Act for local inspection or verification or both by the Mandal Revenue Officer before the Special Court or the Special Tribunal take cognizance of the case is a mandatory requirement. It is further held that taking into consideration the verification report submitted by the Mandal Revenue Officer, would not amount to relying upon any evidence produced by the parties even before taking cognizance of the case. The verification report may render valuable assistance to the Court for the purpose of taking cognizance of a case. The report merely provides inputs enabling the Special Court to apply its mind to the fact situation for the purpose of taking cognizance of the case.

23. As to the issues of maintainability and jurisdiction of the Special Court to entertain the application or its act of taking cognizance of the case, the Full Bench further held that it can be raised by the respondents in the LGC at any time either at the threshold stage or even after taking cognizance of the case by the Special Court

24. Thus, in view of the categorical findings of the Full Bench, we are of the considered opinion that the issues raised in the present writ petition are squarely covered by it and the Full Bench judgment was also followed in the subsequent judgments of this Court. This Court in Sri Rai Bahadur Dwarakanath's case (supra), a Division Bench of this Court has held that the cognizance of the case taken without following the mandatory procedure laid down under Rule 6(2) of the Rules is liable to be set aside and accordingly the cognizance of case taken earlier was set aside and the matter was remanded back directing the Special Court to follow the mandatory procedure u/s 6(2) of the Rules, as ordained by the Full Bench.

25. The learned Counsel appearing for the respondents/applicants Mr. Y. Ratnakar, placing reliance on a Division Bench decision of this Court in Vonkela Subramanyam and others v. Special Court under A. P. Land Grabbing (Prohibition) Act, Hyderabad and others, 2007 (5) ALD 184 (DB), contends that after pronouncement of Full Bench judgment, a contrary view has been taken to the effect that the requirement under Rule 6 referring the application for verification and call for the report from the Mandal Revenue Officer is not mandatory. He also contends that failure to call for the report from the Mandal Revenue Officer would not cause any prejudice to either of the parties or that it would vitiate the entire proceedings and that it cannot also be said that the same is fatal to the case.

26. Evidently, the judgment in Vonkela Subramanyam's case (supra), was rendered without referring to the Full Bench judgment of this Court and, therefore, the said judgment is per incurium. However, no law, as such, has been

laid down as to how Rule 6 is not mandatory and as to how it will not prejudice the case of the parties. Rule 6 is not amended. It is on the statute book prior to the filing of LGC cases. The rules are framed in the year 1988 whereas the present L.G.Cs. are filed in the year 1992.

27. A further question arose for consideration as to whether the Full Bench judgment should be given effect to prospectively or retrospectively. This issue is no more res Integra in view of the decision of the Apex Court in Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd., wherein it is held as under:

"...In our judgment, it is well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principles of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite sometime the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood..."

28. Therefore, in view of the aforesaid judgments of the Apex Court and this Court, the requirement of Rule 6 of the Rules in calling the verification report from the Mandal Revenue Officer for taking cognizance is mandatory. Admittedly, in this case, no such verification report is called for and, as such, taking cognizance by the Special Court is illegal and unsustainable and it is accordingly held so.

29. However, a further question that arises is whether the exercise undertaken by the Special Court in recording the evidence, both oral and documentary and already available on record, would be futile and the said evidence cannot be considered or looked into, in view of taking the cognizance in violation of Rule 6 of the Rules. No doubt, Rule 6 is not procedural but a mandatory requirement and taking cognizance by the Special Court in the instant case is contrary to Rule 6 and is liable to be set aside, but, however, the Counsel appearing for respective parties fairly conceded that after calling for the report, in terms of Rule 6 of the Rules, on hearing both the Counsel, in the event the Special Court is satisfied that there exists cause of action and cognizance is required to be taken and accordingly cognizance is taken, the evidence available on record, may be treated as the evidence recorded after taking cognizance and fit to be considered inasmuch as both the parties were permitted to lead further evidence by order dated 26.6.2009 passed in WP Nos.21387 and 22181 of 1996. Accordingly, the writ petitions are allowed and the impugned order dated 30.8.2010 passed in IA Nos.884 of 2010 in LGC No. 11 of 1992 and IA No.885 of 2010 in LGC No.20 of 1992 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act are set aside and the petitions shall stand allowed. We direct the Special Court to

follow the mandatory procedure under Rule 6 of the Rules before taking cognizance afresh basing only on the averments in the concise statement and Form 1, Report of the Mandal Revenue Officer alone without taking into consideration any of the subsequent events i.e., evidence already available on record. In the event the Special Court, on hearing both the Counsel, comes to the conclusion that there exists cause of action and cognizance has to be taken and accordingly takes cognizance of the cases, the evidence already recorded and available on record shall be considered, as if it is recorded after taking cognizance of the case. There shall be no order as to costs.