
(2009) 10 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27858 of 2007

State of Andhra Pradesh

APPELLANT

Vs

Dishesh Kumar Sabalkha and Others

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 3 ALT 60

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

Bench : Division Bench

Advocate : G.P. for Assignment, for the Appellant; A. Pulla Reddy, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—State of Andhra Pradesh filed the instant writ petition aggrieved by the order passed more than a decade ago by the Special Court constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereafter called, the Special Court and the Act respectively). Be it noted, the Special Court dismissed the land grabbing case being, LGC No. 29 of 1990, filed by the State on 31.08.1995. About two years thereafter, the State unsuccessfully filed a review petition before the Special Court which was also dismissed at the stage of condonation of delay, being I.A. No. 612 of 1997, dated 20.04.1998. Thereafter, the State waited for a long period and ultimately filed the instant writ petition on 26.12.2007 seeking a writ of certiorari to quash the order of the Special Court passed on 31.08.1995.

2. It is not necessary to summarize elaborately the factual background of the case. Suffice to mention that the State went before the Special Court alleging that an extent of about 804 square yards comprised in T.S. Nos. 9/1 and 14, Block T, Ward No. 11, correlated to survey No. 403 of Shaikpet Village was grabbed by respondent Nos. 1 and 2. Respondent Nos. 1 and 2 opposed the LGC alleging that the petition schedule land is a private property, that it has been in

their possession from times immemorial, that they purchased the property from Smt. Jani Begum, wife of Abdul Aziz, and that Government has no right, ownership or interest in the property.

3. The Special Court comprising Hon''ble Chairman, the Judicial Member and Revenue Member framed four issues. Issue No. 4 related to the question whether respondent Nos. 1 and 2 perfected their title by way of adverse possession. Whereas issue No. 1 related to the question of title. The learned Special Court considered issue No. 4 and came to the conclusion based on evidence, both oral and documentary, that respondent Nos. 1 and 2 who had been in possession from 1957 onwards perfected their title by adverse possession. In view of this, the learned Special Court did not elaborately consider the other two substantial issues. As noticed supra, the State filed a review petition with delay of 516 days, but the same was dismissed on 20.04.1998. Thereafter, as presently seen, armed with a decision of the Supreme Court wherein it was laid down that the Special Court constituted under the Act cannot decide the complicated questions of title or adverse possession, the present writ petition is filed. Ground No. 20 is specifically raised which reads, "Hon''ble Supreme Court of India categorically decided that the L.G. Court has no jurisdiction to decide the title on adverse possession ".

4. This Court admitted the writ petition and passed interim orders on 28.12.2007 directing respondent Nos. 1 and 2 not to alienate the property in question. Sometime in February 2008 respondent Nos. 3 to 6 filed an application, being W.P.M.P. No. 1675 of 2008, seeking impleadment. Their case is that after verifying the title of their vendor and also the orders passed by the Special Court in LGC No. 29 of 1990, they purchased the petition schedule property for a valuable consideration under registered sale deeds dated 21.07.2003 bearing document Nos. 2488, 2489, 2490 and 2491 of 2003. This Court passed orders on 05.02.2008 directing to implead respondent Nos. 3 to 6. They also filed an application, being W.V.M.P. No. 254 of 2008, to vacate the interim order dated 28.12.2007. Yet another application, being W.P.M.P. No. 14898 of 2009, has been filed praying this Court to dismiss the writ petition on the ground of delay and laches on the part of the State. When these applications are listed before this Court, the matter itself is heard finally with the consent of the parties and is being disposed of by this order.

5. Learned Assistant Government Pleader strenuously contends that the vendor of respondent Nos. 1 and 2 herself had no title to the property and that in all the town survey records the property has been registered in the name of the Government. She also points out that though issue No. 1 dealing with the title was framed, the learned Special Court committed an error in not going into the question in view of their finding on issue No. 4 in relation to adverse possession. She also submits that Special Court has no jurisdiction to decide the question of adverse possession. This according to the learned Assistant Government Pleader is a grave error apparent on the face of the record warranting interference.

Insofar as laches are concerned, she reiterated the position as obtaining in paragraph 8 of the affidavit accompanying the writ petition.

6. Learned Counsel for respondents placed reliance on V. Laxminarasamma Vs. A. Yadaiah (Dead) and Others, and submits that the Special Court has jurisdiction to go into the question of adverse possession, and therefore, there is no error apparent on the face of the record warranting issue of writ of certiorari. He also submits that the delay and laches in filing the writ petition after lapse of more than twelve years has not been properly explained. And in the meanwhile, respondent Nos. 3 to 6 having verified title of their vendors, respondent Nos. 1 and 2, purchased the property, and therefore, no interference is called for.

7. There is no dispute that the writ petition is filed after more than twelve years explaining the delay and laches in paragraphs 7 and 8 of the affidavit accompanying the writ petition. The Tahasildar, who filed the affidavit in support of the writ petition states as below:

It is humbly submitted that meanwhile, the bifurcation of Mandals took place and the Shaikpet Village falls under the jurisdiction of Shaikpet Mandal and thereafter even the office of Shaikpet Mandal was twice shifted and in the said process, the files were mingled and the bundle of LGC 29 of 1990 could not be traced out, hence no steps could be taken for filing a writ petition questioning the judgment and decree dt.31.08.1995, which is neither wilful nor wanton but due to the said unavoidable and unwarranted circumstances. It is humbly submitted that though the Review Petition filed in LGC 29 of 1990 was dismissed, still the aggrieved party in the said LGC holds right of appeal....

8. Except making an allegation that initially the case was dealt with by the Office of the Golconda Mandal and subsequently the petition schedule property fell within the jurisdiction of Shaikpet Village and as a result of bifurcation, delay occurred, no material is placed before this Court whatsoever when the bifurcation took place, when the records were transferred from Golconda to Shaikpet Village and even after transfer of the records, why the delay occurred. These remain unanswered. Indeed, as seen from the copy of the order dated 20.04.1998 in I.A. No. 612 of 1997 in Review I.A. No. 480 of 1998, the review application was filed by the Mandal Revenue Officer, Golconda Mandal. This only shows that even by the time of filing review petition, Golconda Mandal was dealing with the matter and nothing prevented them from filing a writ petition. Therefore, we are not inclined to accept the explanation for delay and laches. It is well settled that ordinarily delay and laches on the part of the aggrieved party gives prejudice to the third party interest and writ petitions would not be entertained. In this case, it is not denied that respondent Nos. 3 to 6 purchased the property from respondent Nos. 1 and 2, and therefore, the writ petition is barred by uncondonable delay and laches.

9. In so far as the question whether Special Court constituted under the Act can go into the question of adverse possession, the same is no more res integra. In

Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh and Others, the Supreme Court while holding that the jurisdiction under Article 226 is limited and the finding of the fact arrived at by the Special Court cannot be interfered with in exercise of the constitutional jurisdiction, laid down that the Special Court can also go into the question of adverse possession. The view was reiterated in State of Andhra Pradesh Vs. P.V. Hanumantha Rao (D) thr. Lrs. and Another, However, in N. Srinivasa Rao v. Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act (4) 2006 ALT (Rev.) 50 (SC) : 2006 (4) SCJ 328 : 2006 (4) ALT 29 (SC), the two Judge Bench of the Supreme Court laid down that the Special Court constituted under the Act has no jurisdiction to decide the question as to acquisition of title by adverse possession in a proceedings under the Act, as the same would fall within the domain of civil Court. In view of the conflict between Konda Lakshmana Bapuji (2 supra) and N. Srinivasa Rao (4 supra), the matter was referred to a Division Bench. In V. Laxminarasamma (supra) the Supreme Court observed that N. Srinivasa Rao (4 supra) was decided without noticing Konda Lakshmana Bapuji (2 supra). Further, agreeing with Mahalaxmi Motors Ltd. Vs. Mandal Revenue Officer and Others, which relied on Konda Lakshmana Bapuji (2 supra) their Lordships laid down that "Tribunal/Special Court constituted under the Act has the requisite jurisdiction to go into the question of adverse possession ". Therefore, in a given case if the Special Court frames an issue regarding title as well as the issue regarding adverse possession and in its discretion and wisdom decides the issue of adverse possession elaborately not going into the question of title detailedly, the same cannot be treated as error apparent on the face of the record. In this case that was what precisely done by the learned Special Court. As noticed supra, the State was emboldened by the decision of the Supreme Court in N. Srinivasa Rao (4 supra) which stands impliedly overruled by the decision in V. Laxminarasamma (1 supra). Therefore, the Writ Petition is misconceived.

10. In the result, for the above reasons, the Writ Petition fails, and the same is accordingly dismissed with costs.