

(2008) 04 AP CK 0043
In the Andhra Pradesh High Court
Case No : Writ Petition No. 24591 of 2005

State of Andhra Pradesh

APPELLANT

Vs

P. Kantilal Jain

RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2
Andhra Pradesh Survey and Boundaries Act, 1923 — Section 13, 14, 18, 5

Citation : (2008) 6 ALD 296 : (2009) 3 ALT 200

Hon'ble Judges : T. Meena Kumari, J; P.S. Narayana, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; M.V.S. Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

T. Meena Kumari, J.—The Writ Petition is filed by the State of A.P., represented by Mandal Revenue Officer, Marredpally, Secunderabad, for a writ of certiorari calling for records relating to and connected with Order dated 31-12-2004 in L.G.C. No. 40/2001 on the file of Special Court under A.P. Land Grabbing (Prohibition) Act, 1982 at Hyderabad and to quash the same and pass such other or further orders deemed fit in the circumstances of the case.

2. The brief facts of the case are that the petitioner/applicant filed L.G.C. No. 40/2001 on the file of Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad against the respondent alleging that the respondent encroached into Government Graveyard in T.S. No.9, Block-A, Ward 119, corresponding to Sy. Nos. 19/P, 20/IP and 22/P of Marredpally Sarfekhas village to the extent of 6590 sq. mts. out of total extent of 17,300 sq. mts. in the said survey number, which is being used by the local community people of Marredpally village since times immemorial as grave yard. It is further stated that in the Revenue Records, the said land is recorded as "Kabaraasthan Khayam" after the Town Survey conducted during the years 1967 to 1976 and a notification also was issued u/s 18 of A.P.

Survey and Boundaries Act in Hyderabad District Gazette No. 60 dated 25-9-1976 finally notifying the survey conducted and in the absence of any suit filed u/s 14 of the said Act, the same became final and the said land is vested with the Government and there is a duty cast upon the State to protect the same from any encroachment. It is further stated that the respondent herein, as stated above, grabbed an extent of 6590 sq. mts. in the land in question and constructed compound wall during the year 1996 and when the Revenue officials objected him for constructing the compound wall in the grave yard land, he filed W.P. No. 667/1996 before this Court contending that he is the owner of Acs. 11-12 gts. in Sy. Nos. 20/1, 21 and 22 and obtained interim orders on 23-4-1996. Out of the said land Acs. 5-29 gts. falls in Cantonment area and Acs. 3-23 gts. falls in Municipal Corporation of Hyderabad limits and about Acs. 2-00 is covered by encroachments. Accordingly, the petitioner herein/applicant sought declaration that the respondent is a land grabber under the provisions of the A.P. Land Grabbing (Prohibition) Act.

3. The respondent filed counter affidavit before the Special Court inter alia stating that the land in Sy. Nos. 19, 20, 21 and 22 of Marredpally village are patta lands and an extent of Ac. 0-37 guntas in Sy. No. 20/2 is Government land and is being used as graveyard. Further it is stated that the respondent filed W.P. No. 667/1996 before this Court and obtained interim orders on 23-1-1996 and when the Revenue officials attempted to dispossess the respondent from the schedule property, the respondent and other joint owners of the application schedule land and owners of the land of an extent of Acs. 11-12 guntas in Sy. Nos. 20/1, 21 and 22 filed the said Writ Petition and out of the said Acs. 11-12 guntas, an extent of Acs. 5-29 guntas is located in Cantonment Area; Acs. 3-23 guntas is located in the Municipal limits of Hyderabad and an extent of Acs. 2-00 was encroached. It is further stated that the respondent is in no way concerned with the land located in Sy. No. 19. It is further specifically stated that the application schedule land is not being used as graveyard. The respondent further stated that the original survey was conducted in Marredpally village in 1332 Falsli and a Sethwar was issued in 1332 Fasli in respect of the lands located in Sy. Nos. 20, 21 and 22. In the said Sethwar, the extent of land in Sy. Nos. 20, 21 and 22 was recorded as Acs. 10-17 guntas, Acs. 1-05 guntas and Ac. 0-37 guntas respectively. The land to an extent of Ac. 0-37 guntas located in Sy. No. 20 was encroached as graveyard. A supplementary Sethwar was issued in 1349 Fasli in view of the encroachment in Sy. No. 20. The said extent of Ac. 0-37 guntas was identified as located in Sy. No. 20/2. In the original Sethwar issued in 1332 Fasli, no extent of the land located in Sy. Nos. 20, 21 and 22 was recorded either as Government land or graveyard. Taking advantage of the encroachment of Ac. 0-37 guntas during the period between 1332 Fasli and 1349 Fasli, the extent of Ac. 0-37 guntas was shown as graveyard in the supplementary Sethwar issued in 1349 Fasli and only an extent of Ac. 0-37 guntas in Sy. No. 20/2 was shown as Government land or recorded as graveyard. The land in Sy. Nos. 20, 21 and 22 was not shown as Government land or graveyard. The land in Sy. Nos. 20/1,

21 and 22 is not graveyard. In the Sethwar issued in 1332 Fasli an extent of Acs. 1-37 guntas was shown as Pote Kharab land in Sy. No. 20 of Marredpally. The said extent of Acs. 1-37 guntas of Pote Kharab land was shown in the supplementary Sethwar issued in 1349 Fasli and in respect of Pote Kharab land also the Pattedar is the owner of the said Pote Kharab lands. Further it is stated that no notice was issued to the respondent at the time of Town Survey conducted in respect of the land in Sy. Nos. 20/1, 21 and 22 of Marredpally. u/s 5 of the A. P. Survey and Boundaries Act, a notice shall be issued to the Pattedar before commencement of the survey. Further, no notification also was issued. The name of the grandfather of the respondent by name Jawarmal Gaverchand was recorded as registered holder in the pahanies in respect of the land located in Sy. Nos. 20/1, 21 and 22 of Marredpally from the date of their purchase. Inasmuch as there was non-compliance of the mandatory provisions under the A.P. Survey and Boundaries Act, 1923 the entries in the T.S.L.R. are not binding on the respondent. Further, no survey was conducted in the land in Sy. Nos. 20/1, 21 and 22 of Marredpally Surfekhas village in respect of the land fell in Cantonment limits. It is further stated in the counter that the grandfather of the respondent purchased the land from Abdul Razack under a registered sale deed dated 26th Bahman, 1334 Fasli and before the issue of Sethwar in 1332 Fasli the land in Sy. Nos. 20, 21 and 22 was identified as Mazi Sy. Nos. 1, 3 and 2 respectively and the said fact was confirmed by the Deputy Director (Survey and Land Records), Hyderabad in Memo No. E2/TS/163/97 dated 25-7-1997. A part of Sy. No. 20/1 is included in T.S. No. 9, Block-A and Ward No. 119 and also T.S. No. 2 of Ward No. 130, Block-Entire. A part of Sy. No. 22 is included in T.S. No. 9, Block-A and Ward-119 and also in T.S. No. 2 Ward-130, Block-Entire. It is also further stated that the grandfather of the respondent Jawarmal Gaverchand died intestate in 1961 leaving behind his sons and other legal heirs and the names of the said legal heirs of the deceased Jawarmal Gaverchand were mutated in the pattedars" and possessors" columns in the Revenue records by virtue of the proceedings of the Tahsildar, Secunderabad No. A2/3866/81 dated 27-8-1982. The said mutation was confirmed and upheld by the Joint Collector, Hyderabad in his proceedings Ex.B. 2/8447/90 dated 7-8-1993 and the said order of mutation became final. The other legal heirs of the deceased Jawarmal Gaverchand are not impleaded as parties to these proceedings and non-joinder of necessary parties is bad and the application is liable to be dismissed on the said ground alone. It is also further stated that the respondent and other legal heirs of Jawarmal Gaverchand have entered into an agreement of sale in respect of the above lands with M/s. Prime Estates, Jaagruthi Foundations and others under various registered deeds and they were inducted into possession prior to the institution of the L.G.C. and the said persons are in possession of the property. The petitioner/applicant is aware of the said fact. It is also further stated that the U.L.C. authorities in the order DEO/ULC/SBD/GLRSY. No. 1/522/86/92 dated 11-9-1995 declared the respondent and other co-owners as non-surplus holders. The Defence Estate Officer passed the said order after a detailed enquiry with regard to the title and possession of the respondent and other co-owners. The

Defence Estate Officer passed orders that the respondent and the other co-owners are in possession of the application schedule property. The application schedule property is not graveyard as alleged by the applicant. Further it is stated that an extent of Acs.2-00 was deducted from the computation as graveyard by the Defence Estate Officer, but only Ac. 0-37 guntas is shown as graveyard in Sy. No. 20/2 as per the supplementary Sethwar. Subsequently some property was encroached and the total encroached land is Acs. 2-37 guntas. In order to safeguard the property belonging to the respondent and other co-owners the respondent and the said co-owners constructed a compound wall around the area of Acs. 3-23 guntas located in Sy. Nos. 20/1 and 22 which is in the Municipal limits. The Hindu Smasana Vatika development, Marredpalli gave a declaration on 27-12-1995 that it has no objection for construction of the said compound wall which includes the application schedule property. Further, the petitioner/applicant by letter No. B/1603/97 dated 1-3-1999 informed the respondent that the said Acs. 3-23 guntas is not covered by graveyard. Further, the petitioner/applicant collected Rs. 63,094/- from the respondent and others towards non-agricultural land assessment tax over an extent of Acs. 11-12 guntas located in Sy. Nos. 20/1, 21 and 22 of Marredpally village for the period commencing from 1980 to 1995-96 and it was mentioned therein that the land is used for residential purpose. The respondent and other co-owners also obtained permission from Municipal Corporation of Hyderabad for construction of building in an extent of 7550.65 sq. mts. vide permit No. 116/22/99 dated 20-4-1999 and in pursuance of the said permission the purchasers viz., Jagruthi Foundations and others commenced and completed the construction of two blocks on the Eastern side of the property incurring an amount of Rs. 6.31 crores. The applicant did not raise any objection for construction of the building prior to filing of the present L.G.C. The respondent and the other co-owners are the owners of the application schedule property and the petitioner/applicant has no title in the schedule property and hence the respondent is not a land grabber.

4. On the strength of the respective pleadings of the parties, the Special Court framed the following Issues:

1. Whether the applicant is the owner of the Application Schedule property ?
2. Whether the rival title set up by the respondent is true and valid ?
3. Whether the respondent is a land grabber within the meaning of Act XII of 1982 ?
4. Whether the Application is bad for non-joinder of parties?

To what relief ?

5. In support of its case, the petitioner/applicant examined P.W. 1 - Smt. V. Anuradha, the Mandal Revenue Officer of Marredpally, P.W. 2 - Sri A. Sriramulu, the Mandal Surveyor and P.W. 3 - Sri M.R. Mohan Rao, a third party, and got marked Ex.A-1 - True extract of pahani relating to Sy. Nos. 19, 20/1, 20/2 and

22 of Marredpally for the year 1964-65; Ex.A-2 - True copy of pahani relating to Sy. Nos. 19, 20/1, 20/2 and 22 of marredpally for the year 1981-82; Ex.A-3 - Copy of Hyderabad Gazette Notification dated 25-9-1976 in respect of notice published u/s 13 of A.P. Survey and Boundaries Act, Ex.A-4 - True extract of TSLR of Sy. No. 19, 20/P, 21/P, 22/P showing Government grave yard and Ex.A-5 - Rough sketch showing the land alleged to have been grabbed by the respondent herein. Likewise, in support of his claim, the respondent examined one Sri Ch. Subba Rao, Deputy Director, Central Survey, Hyderabad and marked Ex.B-1 - True copy of pahani for the year 1967-68; Ex.B-2 dated 7-8-1993 - Attested copy of proceedings of the Joint Collector, Hyderabad in Case No. 132/8447/90, Ex.B-3 - Letter No. DEO/ULC/SBD/GLSY No. 1/522/86/92 of Defence Estate Office, A.P. Circle and Competent Authority (ULC), Secunderabad Cantonment dated 11-9-1995 and Ex.B-4 - Certified copy of 9(2) Acknowledgement Register relating to the detailed Town Survey of Greater Hyderabad City (Book). Ex.C-1 - Warrant of Commission, Ex.C-2 - Report of the Survey Commissioner, Ex.C-3 - Plan submitted by the Survey Commissioner and Ex.C-4 - Attested Plotted demarcation plan submitted with Ex.C-1 also were marked.

6. It is contended on behalf of the learned Advocate General representing the petitioner/applicant/State that the Special Court erred in dismissing the case without considering the evidence available on record in proper perspective. It is further contended that the Town Survey conducted clinchingly establishes that the application schedule property is Government land and hence the respondent to be treated as a land grabber under the provisions of A.P. Land Grabbing (Prohibition) Act, 1982. Further it is contended that there is ample evidence to prove that the application schedule property is being used as graveyard by the people of the locality since times immemorial. However, the Special Court recorded erroneous findings that there is no graveyard in the application schedule property and that the said property originally belonged to the grandfather of the respondent. It is further contended that no notice also need be issued to the respondent while conducting survey of the locality under A.P. Survey and Boundaries Act 1923 as the same was published in the Gazette and the same to be treated as notice to all concerned and hence the respondent cannot be aggrieved of non-issuance of any notice at the time of conducting the survey.

7. On the other hand, Sri M.V.S. Suresh Kumar, the learned Counsel for the respondent contended that the evidence of P.W. 1 - Mandal Revenue Officer, Marredpally, itself is categorical that the application schedule property belongs to the grandfather of the respondent and that there is no graveyard in the said land. It is further contended that Ex.A-1 which is a true extract of pahani relating to Sy. Nos. 19, 20/1, 20/2, 21 and 22 of Marredpalli for the year 1964-65 shows the name of Jawarmal Gavarchand, the grand father of the respondent, as Pattedar and possessor of the application schedule property. However, the petitioner/applicant could not establish how the name of the grandfather of the

respondent was disturbed during the Town Survey conducted subsequently in 1976. Evidently, even during Town Survey conducted, no notice was served on the legal heirs of the grandfather of the respondent. Even otherwise, the proceedings under A.P. Survey and Boundaries Act 1923 do not authorize or entitle the petitioner/applicant to alter the ownership of the pattedars. The purpose of conducting the Town Survey under A.P. Survey and Boundaries Act 1923 is only to identify the lands and fix the boundaries and not to either confirm or annul the ownership. Viewed from any angle, the Special Court considered all the aspects involved and rightly dismissed the Land Grabbing Case initiated against the respondent.

8. We have gone through the order made by the Special Court in all thoroughness. The Special Court discussed the evidence of P.W. 1, the Mandal Revenue Officer, Marredpalli, a competent authority to depose about the ownership and nature of lands in elaboration, with reference to Exs.A-1 and A-2, the true extract of pahanies for the years 1964-65 and 1981-92 relating to Sy. Nos. 19, 20/1, 20/2, 21 and 22 of Marredpalli. It is the evidence of P.W. 1 that as per Exs.A-1 and A-2, the burial ground is located in an extent of Acs. 0-37 guntas in Sy. No. 20/2 and there is no burial ground in the land in Sy. No. 20/1. It is further the evidence of P.W. 1 that in Ex.A-1 against Sy. No. 20/1 the name of Jawarmal Goverchand, the grand father of the respondent is noted as Kharidar. Similarly in Sy. No. 21 the extent being Ac. 1-05 guntas the name of Jawarmal Goverchand is noted. In Sy. No. 22, in an extent of Ac. 0-37 guntas the name of the said Jawarmal Goverchand is recorded as Kharidar. P.W.I further deposed that as per Ex.A-1 entries for Sy. No. 20/1, 21 and 22, in the possessor column, the name of Jawarmal Goverchand is recorded. Basing on the said evidence of P.W. 1, the Special Court concluded that Jawarmal Goverchand was the Pattedar, Khatedar and possessor of the land and there is no basis for preparation of Town Survey Land Records during the period from 1965 to 1976 and further held that the petitioner/applicant could not establish how graveyard was shown in Sy. Nos. 20/1, 21 and 22 after the Town Survey was conducted by showing the village map or by showing appropriate acquisition proceedings for using the application schedule land as graveyard. Further, the Special Court considered the evidence of P.W. 2, the Mandal Surveyor, who deposed that during 1965 to 1976 the application schedule land was shown as grave yard and no notice was given to pattedars during the Town Survey. P.W. 2 further deposed that he had not filed any documentary evidence showing that the application schedule property is graveyard except the T.S.L.R. The petitioner/applicant examined P.W. 3, a third party and who is stated to be the Secretary, Hindu Smasana Vatika, Marredpally, to prove that the application schedule property is a burial ground. However, P.W. 3 did not produce any documentary evidence to prove that he was elected by the local people of Marredpally to act as the Secretary of Hindu Smasana Vatika. Further, the aspect of non-production of any records by P.W. 3 to show the exact location and extent of the burial ground also had been taken into consideration by the Special Court in disbelieving the

contention of the petitioner/applicant that the application schedule property is a burial ground being used as such by the local people since times immemorial. As against this evidence, the evidence of R.W.I who is the Deputy Director, Central Survey, is available on record, apart from Exs.B-1 to B-4 and Exs.C-1 to C-4. R.W.1 categorically deposed that there is clear indication that the graveyard covered as EFGHIJKLMNOPQ with some structures is scattered here and there. Ex.C-3 is the plan showing the location of the burial ground. In Ex.C-3, the burial ground is shown within the demarcated plan EFGHIJKLMNOPQ which is a strong piece of evidence to hold that the graveyard is located in the said location. It is also the evidence of R.W.1 that the application schedule property is noted as ABCD in Ex.C-3 plan. It is further deposed by R.W.1 that the application schedule property is surrounded by compound wall on four sides, however on the Southern side of the application schedule property there is no compound wall connecting "C" and "D". Further, R.W.1 deposed that "ABCD" marked property, as mentioned in Ex.C-3 is not burial ground and it is a vacant land surrounded by compound wall except on the Southern side. Thus, it is clear that the application schedule property is not graveyard and the Special Court held accordingly. Further, the Special Court also considered the aspect whether any part of the application schedule property is being used as burial ground. R.W.I deposed that the extent of burial ground is Acs. 5-04 guntas and out of the said extent, an extent of Acs.2-26 is located in Cantonment limits and the balance Acs.2-18 guntas is located within the Municipal limits which is covered by old Sy. No. 20/1 and relying on Ex.C-2 report and Ex.C-3 plan coupled with the evidence of R.W.1, the Special Court held that there are no reasons to disbelieve the evidence of R.W.I and Exs.C-2 and C-3 and came to the conclusion that the application schedule property is not graveyard, but the same belongs to Jawarmal Goverchand and his legal heirs i.e., the respondent and 17 other persons mentioned in Ex.B-3. The Special Court also considered the argument that the respondent was not in possession of the application schedule property and relied upon the evidence of R.W.1 that the application schedule property is not a graveyard and there are no signs of graveyard and further there is no evidence that dead bodies were cremated or buried in the said property and ultimately, the Special Court held that the legal heirs of Jawaharmal Goverchand, grandfather of the respondent, are the owners of the application schedule property. The Special Court further held that the entries in T.S.L.R. are not conclusive proof of title to immovable property in the light of the decisions in Hyderabad Potteries Private Limited Vs. Collector, Hyderabad District and another, and Sogra Begum and Anr. v. State of A. P. Revenue Department and Ors. 2002(1) An. W.R. 131 (DB).

9. On the aspect of non-examination of the respondent to depose about his case, the Special Court held that the documentary evidence adduced by both the petitioner/applicant and the respondent proved that the grandfather of the respondent i.e, Jawarmal Goverchand, is the owner of the application schedule property and the names of the respondent and 17 other legal heirs of the

deceased Jawarmal Goverchand were mutated in the revenue records as ordered by the Joint Collector under Ex.B-3 and hence the non-examination of the respondent is not fatal when there is positive proof by way of the evidence of R.W.1 and the documentary evidence to prove that the application schedule property is not graveyard and that the grandfather of the respondent is the owner and possessor of the said property.

10. We have heard the learned Counsel on either side. It is to be noticed that under the provisions of A.P. Land Grabbing (Prohibition) Act 1982, the initial burden to prove that the application schedule property belongs to Government, rests on the Government. In the present case, as contended by the learned Counsel for the respondent, though the petitioner/applicant discharged its burden of establishing the prima facie case, we are satisfied that the respondent was successful in rebutting the same by producing the relevant pahanies and other documents in support of his claim of ownership over the application schedule property, for the reason that the petitioner/applicant could not explain how the application schedule property came to be vested in the Government after the Town Survey. It is well settled that the proceedings under the A.P. Survey and Boundaries Act, 1923 are not conclusive proof of title to the immovable property. Admittedly, when the entries in the revenue records upto 1967 reflect the name of the grandfather of the respondent as pattedar, khatedar and possessor of the application schedule land, we are satisfied that the respondent successfully rebutted the prima-facie case sought to be established by the petitioner/applicant by virtue of the proceedings consequential to the Town Survey conducted during the period 1967-1976. It is strongly contended on behalf of the of the petitioner/applicant that after completion of Town Survey a notification u/s 13 of the A.P. Survey and Boundaries Act was published in Hyderabad District Gazette No. 60, dated 25-9-1976 which was not challenged by filing appropriate civil suit u/s 14 of the said Act and hence the same became final and no separate notice need be given in this regard to the respondent and inasmuch as the application schedule property is shown as Government land after the said Town Survey, the respondent to be declared as a land grabber. We are afraid, we cannot accede to the contention advanced by the learned Government Pleader for the reason that even assuming for a moment that no separate notice is required to be issued to the respondent and that the notification published in the Gazette is sufficient notice, the entries in Town Survey Land Record (T.S.L.R.) cannot be equated to Record of Rights establishing title or ownership to the property as held in the decisions referred (1) and (2) supra. The Special Court framed appropriate Issues and recorded proper findings that the application schedule property is not graveyard but the same is the patta land of the grandfather of the respondent and that the petitioner/applicant failed to establish that the respondent is a land grabber within the meaning of Section 2(d) of A.P. land Grabbing (Prohibition) Act, 1982 (Act XII of 1982). The said findings being cogent and convincing arrived at after taking into consideration the oral and documentary evidence available on record, the same are hereby

confirmed. Hence, we do not find any reason to interfere with the impugned order made by the Special Court and accordingly the same is hereby confirmed.

11. In the result, the Writ Petition is dismissed. No order as to costs.