

(2006) 09 AP CK 0093
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8812 of 2003

State of A.P.

APPELLANT

Vs

Prakash

RESPONDENT

Date of Decision : 28-09-2006

Acts Referred:

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 2, 541, 8(8)
Andhra Pradesh Land Grabbing (Prohibition) Regulations, 1982 — Section 3, 3(1)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2(3)
Constitution of India, 1950 — Article 38, 39, 46

Citation : (2007) 1 ALD 133 : (2007) 1 ALT 383

Hon'ble Judges : T. Ch. Surya Rao, J;G. Chandraiah, J

Bench : Division Bench

Advocate : Government Pleader for Assignment, for the Appellant; P. Venugopal, for the Respondent

Final Decision : Allowed

Judgement

T. Ch. Surya Rao, J.—The writ petitioner seeks a writ of certiorari for declaring the judgment dated 28.6.2002 passed by the learned Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act (hereinafter referred to as "the Act"), Hyderabad, in L.G.C. No. 53 of 1998 as illegal, arbitrary and violative of principles of natural justice and consequently to set aside the said judgment. The State is the writ petitioner.

2. The sole respondent herein filed the application in L.G.C. No. 53 of 1998 against the State for declaration that he was the owner of the land in dispute and for directing the State to vacate and deliver the vacant possession of the same. The case of the applicant concisely was that the land in dispute admeasuring 358 square yards covered by Plot No. 6 is a part of bungalow No. 146/A situate at Prenderghast Road, Secunderabad, in the layout of the Hyderabad Displaced Persons Co-operative Housing Society Limited (for short, "the Society") was purchased from Sri V.M. Lalavani and others under a registered sale deed dated 24.12.1973. The vendors of the applicant purchased the same from one Smt.

Nanki Bai under a registered sale deed dated 19.9.1970. She in turn purchased the same from the Society under a registered sale deed dated 8.3.1970 which prepared a layout and divided the said property into various plots after having obtained the necessary permission from the Municipal Corporation in File No. 389/E/1959-60 dated 23.12.1959 before selling away the said plots to its members. The Society in turn purchased the property in two moieties-one in an extent of 2,400 square yards from Smt Urmila Rani under a sale deed dated 11.2.1959 and the other in an extent of 10,107 square yards from R.D. Bhupal and Krishna Pratap Rao the sons of R. Jaswantha Rao. The said R.D. Bhupal and Krishna Pratap Rao purchased the land in an extent of 25,000 square yards surrounded by a compound wall forming part of Bungalow No. 146/A situate at Sardar Patel Road, Secunderabad, under a registered sale deed dated 2.11.1955 from Smt Rani Venkata Janakamma the donee under a registered gift deed dated 8.2.1910 from her husband Sri Raja Rajeshwar Rao who purchased the same in a Court auction sale under a sale certificate dated 31.7.1902. Thus, the applicant traced his title to the property in dispute.

3. While so, the State filed L.G. O.P. No. 194 of 1989 on the file of the Special Tribunal-cum-Chief Judge, City Civil Court, Hyderabad, against one Madhav Das in respect of the plot covered by Plot No. 6 in the layout of the Society. The said Madhav Das although denied the title of the State qua the said plot stated in his counter inter alia that he was neither the owner nor the possessor nor occupier of the said land. Eventually, L.G.O.P. No. 194 of 1989 was allowed against the said Madhav Das. He, however, filed an appeal before the Special Court under the Act in L.G.A No. 27 of 1997. At that stage, the applicant who was not a party to the said proceedings before the Special Tribunal sought to come on record by filing LA. No. 130 of 1998. Eventually L.G.A No. 27 of 1997 ended in dismissal, in consequence whereof LA. No. 130 of 1998 was also dismissed by the Special Court. It was, however, observed therein inter alia that the applicant was at liberty to agitate his claim qua the land in dispute before an appropriate forum. Pursuant thereto, the applicant filed L.G.C No. 53 of 1998 against the State.

4. The State contended before the Special Court resisting that application that the applicant set up a false claim qua the disputed property and that he was never in possession of the said property. Had he been really in possession of the said property, he would have come on record and contested the L.G.O.P. No. 194 of 1989 which was pending from the year 1989 to 1996. The respondent in L.G.O.P. No. 194 of 1989, namely, Madhav Das claimed the property but did not adduce any evidence therein. He was eventually found to be in illegal occupation of the said land taking advantage of his position as President of the Sindhi Society and after enquiry the Tribunal directed the said Madhav Das to vacate the premises. The applicant sought to come on record belatedly when the appeal filed by the said Madhav Das in L.G.A. No. 27 of 1997 was pending and ultimately that application was rightly dismissed.

5. It was the further claim of the State that the property in question was covered

by TS. No. 8, Block C, Ward No. 101 and the same had been classified as "Government Abadi" land during the survey and settlement operation conducted during the period 1964 to 1971. It was duly published in the Gazette dated 22.4.1976 inviting the objections from the public. The applicant never raised any objection to the said survey nor filed any suit questioning the correctness of the said town survey. The town survey thus became final and the entry in the Town Survey Land Register (TLRS) clearly showed that the land in dispute was the Government Abadi land.

6. On the above pleadings, the learned Special Court framed the following issues for enquiry:

- (1) Whether the applicant has title to the application schedule property?
- (2) Whether the rival title set up by the respondent-State is true, valid and binding?
- (3) Whether the decision in L.G.O.P. No. 194 of 1989 before the Special Tribunal-cum-District Judge, City Civil Court, Hyderabad, as confirmed by this Court in L.G.A. No. 27 of 1997 dated 13.2.1998 operates as *res judicata*?
- (4) Whether the respondent is a land-grabber? and
- (5) To what relief?

7. At the time of enquiry, two witnesses were examined on the side of the applicant and Exs. A1 to A7 were marked. Two witnesses were examined on the side of the State and Exs.B1 to B4 were got marked. At the culmination of enquiry, eventually as stated hereinabove, the Special Court allowed the application and directed the State to deliver the vacant possession of the disputed property to the applicant.

8. In the instant writ petition, the learned Government Pleader for Assignment reiterates the same contentions that have been raised by the State before the Special Court.

9. Sri P. Venugopal, learned Counsel appearing for the respondent, seeks to support the impugned judgment as impeccable and quite unassailable.

10. Apropos the merits of the case, the learned Special Court appreciating the evidence adduced on either side on the point in no unmistakable terms reached the conclusion that the applicant could establish his title to the property in dispute and the respondent/State failed to establish its title qua the said land. Having regard to the judgments in O.P. No. 178 of 1989 filed by the State against one Jiwatram Ramchandani in respect of Plot No. 7 and O.P. No. 173 of 1989 filed against one Vasulal in respect of Plot No. 22 which were eventually ended in dismissal, both the said Ramchandani and Vasulal claimed to have purchased those lands from the Society and having regard to the clear title traced by the applicant to the original owner who had purchased the property way back in the year 1910 in a Court auction; the learned Special Court was of

the clear view that a mere entry in TSLR could not confer any title in favour of the State which entry itself was not conclusive and in view of the voluminous and overwhelming evidence adduced on the side of the applicant, the learned Special Court recorded an unequivocal finding that the land in dispute covered by Plot No. 6 forms part of Bungalow No. 146/ A and the State had no title to the same. Not even a single circumstance could be shown before us which can persuade us to take a different view than what had already been unequivocally observed by the learned Special Court. The finding reached by the learned Special Court, as rightly contended by the learned Counsel appearing for the respondent, is impeccable and quite unassailable. The voluminous evidence available on record clearly shows that the respondent herein is the owner of the land in dispute.

11. During the course of arguments, an inquisitive question has arisen as to whether an application could be maintained against the State on the allegation that it is a land-grabber. Having regard to the same the point that precisely falls for determination is whether the State in the instant case is the land-grabber which entitles civil as well as criminal remedies?

12. The question whether the State can be a land-grabber and is bound by the provisions of the Act which has been enacted by it is indubitably interesting. Having regard to the significance of the question it needs a peep into the historical backdrop. The common law principle prevalent in England earlier was that no statute shall bind the crown unless the crown is named therein either expressly or by necessary implication. The said rule is based on the maxim *roy n'est lie par aucun statute, si il ne soit expressment nomme*, meaning thereby, the king is not bound by any statute, if he be not expressly named to be so bound. The said principle has been reiterated by the Privy Council in *Bombay Province v. Bombay Municipal Corporation* AIR 1947 PC 34. It was held in Para 11 thus:

Every statute must be supposed to be "for the public good", at least in intention, and even when it is apparent that one object of the Legislature is to promote the welfare and convenience of a large body of the King's subjects by giving extensive powers to a local authority, it cannot be said, consistently with the decided cases, that the Crown is necessarily bound by the enactment.

13. The converse seems to the position prevailing in India after the advent of the Indian Constitution. It is no doubt true, a Constitution Bench of the Apex Court in the *Director of Rationing and Distribution Vs. The Corporation of Calcutta and Others*, , by a majority had taken the same view. In Para 9 the Apex Court held thus:

The question naturally arises: whether the Constitution has made any change in that position? There are no words in the Constitution which can be cited in support of the proposition that the position has changed after the republican form of Government has been adumbrated by our Constitution. It was argued on behalf, of the respondent that the existence of such a prerogative is negated by

the very form of our new set up, that is to say, it was contended that the republican form of Government is wholly inconsistent with the existence of such a prerogative. In our opinion, there is no warrant for such a contention. The immunity of Government from the operation of certain statutes, and particularly statutes creating offences, is based upon the fundamental concept that the Government or its officers cannot be a party to committing a crime-analogous to the "prerogative of perfection" that the king can do no wrong. Whatever may have been the historical reason of the rule, it has been adopted in our country on grounds of public policy as a rule of interpretation of statutes.

14. However, a Full Bench of nine Judges of the Apex Court in *Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta*, , overruled its earlier judgment in *Director of R & D's case* (supra). That was a case where the State of West Bengal admittedly was carrying on the trade of a daily market, without obtaining a licence as required u/s 218 of the Calcutta Municipal Act, 1951. The Corporation of Calcutta filed a complaint against the State of West Bengal before the Presidency Municipal Magistrate u/s 541 of the Act. The main contention of the Government was that the State was not bound by the provisions of the Act. The case ended in acquittal before the Court of the Magistrate. However, the High Court held that the State was as much bound as a private citizen to take out a licence. In the appeal before the Apex Court a Bench consisting of nine Judges was constituted to consider the correctness of its earlier decision in *Director of R & D's case* referred to supra. In Para 26 of its judgment the Apex Court emphatically held that the State was not exempted from the operation of Section 218 of the Calcutta Municipal Corporation Act. His Lordship Wanchoo, J., while concurring with the majority view in Para 57 held thus:

I am therefore of the opinion that the rule that the Government is not bound by a statute unless it is expressly named or bound by necessary implication does not prevail in this country and the decisions in the *Province of Bombay case* (supra) and *Director of Rationing and Distribution case* (supra), and the subsequent decisions applying the rule to the construction of Indian Acts should not be followed. The imposition of this artificial rule has been harmful to our body politic.

15. In *Union of India (UOI) Vs. Jubbi and Dunia, etc.*, , a three Judge Bench of the Apex Court had to consider the principle again. In Para 12 the Court held thus:

It is clear that the object of the Act was to abolish big landed estates and alleviate the conditions of occupancy tenants by abolishing the proprietary rights of the landowners in them and vesting such rights in the tenants. That being the paramount object of the Legislature it is hardly likely that it would make any discrimination between the State and the citizen in the matter of the application of the Act. This is especially so because if such a discrimination were to be brought about through a construction suggested by the State it would result in an anomaly in the sense that whereas occupancy tenants of lands owned by

citizens would have the benefit of such a beneficent legislation occupancy tenants of lands owned and held by the State would not get such benefit. An intention to bring about such a discrimination against the latter class of tenants cannot be attributed to the Legislature whose avowed object was to do away in the interest of social and economic justice landlordism in the State. In view of the decision in Superintendent of Legal Remembrancer of Legal Affairs's case (supra), the State cannot also claim exemption on the ground only that the Act does not expressly or by necessary implication make it binding on the State.

16. In *Samatha v. State of Andhra Pradesh*, on which Sri Venugopal, learned Counsel, also seeks to place reliance upon, the regulation which seeks to prohibit any person to transfer land situate in scheduled area to a non-tribal was held to include also the State thus prohibiting the transfer of any Government land to a non-tribal. It was held by the Apex Court thus:

The word "person" would include both natural persons as well as juristic person and constitutional Government. This liberal and wider interpretation would maximize allotment of Government land in Scheduled Area to the tribals to make socio-economic justice assured in the Preamble and Articles 38, 39 and 46 a reality to the tribals. The restricted interpretation would defeat the objective of the Constitution. The word "person" would be so interpreted as to include State or juristic person, Corporate sole or persona ficta. Transfer of land by the juristic persons or allotment of land by the State to the non-tribals would stand prohibited, achieving the object of Para 5(2) of the Fifth Schedule of the Constitution and Section 3 of the Regulation. If the word "person" is interpreted to mean only natural persons, it tends to defeat the object of the Constitution, the genus and the Regulation, its species. As a corollary, by omission in the final draft of the Fifth Schedule of the power of the State Government to transfer its land to the non-tribals with the sanction of a competent authorized officer or authority would, by interpretation brought into effect and the object of the Constitution would easily be defeated. We are, therefore, inclined to take the view that the word "person" includes the State Government. The State Government also stands prohibited to transfer by way of lease or any other form known to law, the Government land in Scheduled Area to non-tribal person, be it natural or juristic person except to its instrumentality or a Co-operative Society composed solely of tribes as is specified in the second part of Section 3(1)(a).

17. In *State of Bihar v. Sonabati Kumari* AIR 1968 SC 221, it was held that if a State disobeys a temporary injunction, its property is liable to be attached under Order 39, Rule 2(3) of the Code of Civil Procedure, 1908.

18. In *Lucknow Development Authority Vs. M.K. Gupta*, it has been held that a Consumer Protection Act, 1986 applies to a statutory authority and a Government or semi-Government body or a local authority in the same way as it applies to private bodies for the Act does not either expressly or impliedly indicate that these bodies are excluded from the purview of the Act.

19. In *State of A.P. and others Vs. Special Tribunal (Land Grabbing) Dist. Judge, Warangal and others*, to which one of us (TCSR, J.,) was a party, having regard to the definition of the expression "person" as given in Section 2(g) of the Act which is an inclusive definition, it was held in the said judgment *inter alia* that it could not be said that the Government was excluded from the purview of the Act and its provisions; and that it could not enforce against the Government when it was alleged to have committed the offence of land-grabbing.

20. In a democratic polity the rule or supremacy of law is the basic trait. Ours is a welfare State. The State cannot be placed on a higher pedestal on the premise that it is a sovereign power *qua* its subject. The maxim "king can do no wrong" has become obsolete and has been consigned to the limbo and oblivion. The common law principle that no statute shall bind the crown unless the crown is named therein either expressly or by necessary implication seems to be an anathema to the democratic polity governed by rule of law.

21. Having regard to the above discussion it is obvious that the rule that applies in India is that a general Act applies to citizens as well as to State unless it expressly or by necessary implication exempts the State from its operation. The same rule will also apply to Government bodies and the Corporations situated under special Act. *Vide Lucknow Development Authority v. M.K. Gupta (supra)*.

22. Obviously the State has not been excluded under the Act from the application of its provisions. In the absence of an express provision the question whether the State has been exempted by necessary implication from the operation of an Act or any of its provisions will depend upon a fair construction of the Act in question. In this context it is apt to consider the definition of the word "person" enjoined u/s 2(g) of the Act. The provision germane reads as under:

Section 2(g) "person" includes a group or body of persons, an association, or a religious or charitable institution or endowment, whether incorporated or not;

23. *Ex facie* it is an inclusive definition. Obviously the Land Grabbing (Prohibition) Act has not exempted the State by any express provision from the operation of any of the provisions of that Act.

24. As can be seen from Section 2(e) of the Act 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. If that activity of grabbing is committed by a person or group of persons without any lawful entitlement that person or group of persons will become a land-grabber. A combined reading of Section 2(e) and 2(g) clearly shows that a religious or charitable institution or endowment can be a grabbed and a grabber. What are conspicuously left out from the word "person" as defined u/s 2(g) are the Government and a local authority. Whether this conspicuous omission of the State from the definition of person although the definition of word "person" is an inclusive definition has any significance or not is to be seen. The legislative intent in having passed the Act which is visibly clear

from the Statement of Objects and Reasons as given in the schedule appended to the Act shows that the Act is meant to protect the vast extents of land belonging to the Government, local authority, wakfs and charitable and religious endowments and evacuees and private persons, who are not in a position to effectively defend their possession. When once the Act seeks to protect the land belonging to a private individual who is unable to defend his possession from a person who commits the act of land-grabbing the provisions of the Act would operate. If the State occupies the land of the individual for any reason on the mere premise that the State is a sovereign authority it cannot be treated as a separate class and discriminated from the other class and excluded from the ambit of the word "person".

25. Well, the Act clearly envisages an activity of land-grabbing pertaining to the lands belonging to a religious or charitable institution or endowment. Therefore, grabbing of the land belonging to the endowment is clearly envisaged u/s 2(e) of the Act. Similarly, endowment can be a grabber as can be seen from Section 2(g) of the Act. Well, when once a religious or charitable institution or endowment can be a grabbed and a grabber, there is no reason as to why Government can also be a grabber and grabbed. Therefore, the expression "land-grabber" shall have to be read along with the expression "person" as defined in Section 2(g). Although it has not included in its ambit the word "Government", having regard to the fact that a special Act has been passed so as to protect the lands of individuals, Government, Endowment Department, including wakf and local bodies, if the land of the individual is grabbed by the State, State cannot be excluded from the expression "land-grabber". For the above reasons, we are of the considered view that the State is not excluded from the provisions of the Act, by necessary implication and it comes within the ambit squarely of the expression "person". For the same reasons the State can also be prosecuted for the offence of land-grabbing.

26. This then takes us to consider the crucial question that the State in the instant case having regard to the matrix of the case is a land-grabber. It is essentially a jurisdictional question, since the maintainability of the application qua the State depends on the allegation of commission of an act of land-grabbing. It needs to consider at the threshold the definitions of land-grabber and land-grabbing enjoined u/s 2(d) and (e) of the Act. It is expedient to quote both the provisions for better understanding of the matter. They read as under:

2(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 unauthorized 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.

2(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 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 licence agreements or any other illegal agreements in respect of such lands, or to construct unauthorized 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 unauthorized structures; and the term "to grab land" shall be construed accordingly.

27. From a glance at the said provisions hereinabove excerpted, it is obvious that a person commits an act of land-grabbing by illegally taking possession of a land whether belonging to the Government, local authority, religious or charitable institution or endowment, including wakf or any other private person without any lawful entitlement thereto and with a view to enter into that land or create illegal tenancies or lease and licence in respect of such lands or to construct unauthorized structures thereon for sale or hire. Such a person is land-grabber and the act he has committed is land-grabbing. A person who abets the act of land-grabbing by giving financial aid is also a grabber. Clauses (d) and (e) of Section 2 of the Act have been considered by the Apex Court in *Konda Lakshmana Babuji Vs. Government of Andhra Pradesh and Others*, . It was held in Para 34 thus:

A combined reading of Clauses (d) and (e) would suggest that to bring a person within the meaning of the expression "land-grabber" it must be shown that: (i) (a) he has taken unauthorisedly, unfairly, greedily, snatched forcibly, violently or unscrupulously any land belonging to the Government or a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person; (b) without any lawful entitlement; and (c) with a view to illegally taking possession of such lands, or enter or create illegal tenancies or lease and licence agreements or any other illegal agreements in respect of such lands or to construct unauthorized 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 unauthorized structures; or (ii) he has given financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures thereon; or (iii) he is collecting or attempting to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation; or (iv) he is abetting the doing of any of the abovementioned acts; or (v) that he is the successor-in-interest of nay such persons.

[Emphasis supplied]

In Para 37 the Court held thus:

To make out a case in a civil case that the appellant is a land-grabber the first respondent must aver and prove both the ingredients- the factum as well as the

intention-that the appellant falls in the categories of the persons, mentioned above [Clause (d) of Section 2 of the Act], has occupied the land in dispute, which belonged to the first respondent, without any lawful entitlement and with a view to or with the intention of illegally taking possession of such land or entering into the land for any of the purposes mentioned in Clause (e) of Section 2 of the Act, summarized above.

28. Again in APSRTC Vs. Revenue Divisional Officer/Land Acquisition Officer and Another, , in Para 8 the Apex Court held thus:

From a reading of the definitions of the phrases "land-grabber" and "land-grabbing" it is clear that the grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally. That is to say, the land-grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement. If such elements as indicated above are missing in our view, it would not be a case of land-grabbing.

[Emphasis supplied]

29. In State of Andhra Pradesh Vs. Prameela Modi and Others, , a Division Bench of this Court placing reliance upon Gouni Satya Reddi v. Government of A.P. and Ors. (supra), case at the end of Para 37 held thus:

Assertion of one's own right, title and interest in the land whether sustainable or not will not amount to any act of land-grabbing unless it is established that possession was taken illegally with that view in mind.

30. In Mohd. Siddiq Ali Khan Vs. Shahsun Finance Limited, , a Full Bench of this Court considered the concept of the expression "taking cognizance". In the process while referring to the decision of Konda Lasmana Bapuji's case (supra), in Para 106 held that unless a person unauthorisedly and without any lawful entitlement thereto enters or intrudes into a land forcibly or otherwise, he cannot be held to be a landgrabber. The emphasis is on taking possession without any lawful entitlement. The Full Bench in Para 108 again while referring to Gouni Satya Reddi's case (supra), of the Apex Court reiterated the view that the land-grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement; if such elements are missing, it would not be a case of land grabbing. Ultimately in Para 112 the Court held thus:

In our considered opinion, the mere repetition of expression "land-grabber" and "land-grabbing" by themselves would not be enough for taking cognizance of a case, unless the averments and the allegations made in the concise statement attract the ingredients of "land-grabber" or "land-grabbing.

31. In M. Yadagiri Reddy Vs. V.C. Brahmanna and Another, , a Division Bench of this Court again while referring to the judgment of the Apex Court of Konda Laxamana Bapuji's case (supra) and Gouni Satya Reddi's case (supra), in Para 19 held thus:

It is observed in clear and categorical terms that merely not being entitled to get the possession itself is not enough to hold a person to be a land-grabber unless the possession was taken with an intention to enter into possession illegally. The mere fact of legally not entitled to the possession would not fulfil the ingredients of the definition "land-grabber" and "land-grabbing." Mere fact that one is not lawfully entitled to enter into possession would not be enough to characterize one to be a land grabber and such entry does not amount to land-grabbing unless possession is illegally taken with that view in mind. The person taking possession must know that he is acting illegally while taking possession of the land.

[Emphasis supplied]

32. In Hindusthan Aeronautics Employees Cooperative Housing Society Limited Vs. Special Court constituted under A.P. Land Grabbing (Prohibition) Act, 1982 and Others, , a Larger Bench of this Court consisting of five Judges had to consider a pigment question, whether an allegation of attempt to grab land attracts the jurisdiction of the Special Court to entertain cases or not? While considering the judgment of the Apex Court in Konda Laxmana Bapuji's case (supra), in Para 41 it was held thus:

The predominant factor is that possession through unauthorized and objectionable means has been taken and that there does not exist any lawful entitlement in favour of the present who has taken such possession.

[Emphasis supplied]

33. In the process of holding that the Apex Court in Konda Laxmana Bapuji's case (supra), did not hold that attempts to take such possession amounts to land-grabbing the Larger Bench made the above observations.

34. Whenever a special enactment prohibits an act or omission and prescribes penal consequences for interaction of such act or omission unless a different intention is discernible from the act the statute proceeds on the principle of strict liability. Mens rea is not the requisite element in such cases. Otherwise, the very object and purpose of the Act would get defeated. Indeed, a Division Bench of this Court earlier in K. Narsing v. Special Court under AP Land Grabbing (Proh) Act, 1996 (1) ALD (Crl.) 601 : 1996 (2) ALD 717 (DB), had taken a similar view in Para 12 thus:

The question of proof of mens rea does not arise to establish the offence of "land-grabbing". The Legislature, in its wisdom, enacted the AP Land Grabbing (Prohibition) Act, 1982 constituting the offence of land-grabbing if it is found a person is in possession of the land without any lawful entitlement. The offence of land-grabbing does not contemplate any particular mens rea in the offender.

35. The Bench held that the offence mentioned in the Act is based upon strict or absolute liability. It seems to be in conformity with the theory that a special enactment which prohibits an act or omission may prescribe the consequences

for infraction thereof on the basis of strict liability. A given set of facts may entitle civil as well as criminal remedies. The "act of land-grabbing" envisaged under the Act entitles civil and criminal consequences. So what constitutes an act of land-grabbing is the same for both remedies. Essentially, there can be no difference in between both the remedies except the degree of proof that is required in each case inasmuch as the proof that is required in a civil case is by the test of preponderance of probability unlike in a criminal case where it shall be beyond all reasonable doubt.

36. Intention is a sine qua non in civil cases as held by the Apex Court in Konda Lakshmana Bapuji's case (supra). If that were so it is equally required as an essential ingredient in a criminal case too unless the Act envisages strict liability. However, the Apex Court in Konda Lakshmana Bapuji's case (supra) left, the second aspect namely whether intention is required or not for a criminal case, as open.

37. Even otherwise intention is a mental element and shall have to be discerned from the matrix of the case. Indeed it has been held so in Konda Lakshmana Bapuji's case (supra), in Para 67 thus:

The requisite intention which is an important ingredient of the land-grabber, though not stated specifically can be inferred by necessary implication from the averments in the petition and the plaint and the deposition of the witness like any other fact. If a person comes into occupation of any Government land under the guise of a permanent lease executed by an unauthorized person having no title to or interest in the land it cannot but be with a view to illegally taking possession of such land. We make it clear that we are expressing no opinion on the point whether those averments would constitute "mens rea" for purposes of offence under the Act.

38. Obviously, the Act is a Special Act and it prescribes penal consequences. The object and purpose of the Act would get defeated if mens rea is required to be proved. However, in view of the judgment of the Apex Court in Konda Lakshmana Bapuji's case (supra), and subsequent judgments of this Court following the judgment of the Apex Court, a divergent view cannot be expressed.

39. A judgment of the Court shall have to be considered with reference to the matrix of that case and the ratio can be understood accordingly with reference to the point of controversy involved and eventual decision rendered. We are reinforced in our above view by a recent pronouncement of the Apex Court in, Uttaranchal Road Transport Corpn. and Others Vs. Mansaram Nainwal, . In Para 13 at Page 370 the Court held thus: "According to the well settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts, (ii) statements of the principles of law applicable to the legal problems disclosed by the facts" and (hi) judgment based on the combined effect of the above. A decision is an authority

for what it actually decides. What is of the essence in a decision is its ratio and not every observation made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent."

40. In *State of Gujarat and Others Vs. Akhil Gujarat Pravasi V.S. Mahamandal and Others*, , the Apex Court held thus:

It is trite that any observation made during the course of reasoning in a judgment should not be read divorced in the context in which they were used.

41. In *Konda Lakshmana Bapuji's case* (supra), the Apex Court was of the view that there shall be an activity of taking possession of any land forcibly, violently, unscrupulously, unfairly or unauthorisedly without any lawful entitlement and with the necessary means rea/intention that is to say with the intention or with a view to illegal taking possession of such lands or create illegal tenancies, leases or licences or to construct structures on the land.

42. The matrix of the case in the said judgment shows that the appellant traces his title to the land in dispute under an unregistered agreement for perpetual lease executed by one of the successors of the Inamdar, Mohammed Nuruddin Ansari, in respect of the inam land in Sy. Nos. 9/15, 9/16, 9/17 and 9/18, November 28, 1954 followed up by registered perpetual lease dated 11.12.1957. Soon thereafter, one, Rashid Shahpurji Chenoy had set up a rival claim to the land in dispute by filing the suit, O.S. No. 13 of 1988 before the Court of I Additional Chief Judge, City Civil Court, Hyderabad, against the State the appellant, and others for regularization of title to and recovery of possession of the skid land. During the pendency of the suit, the appellant after having sought permission of the Court constructed a building "Jaladrushyam" on the land in dispute. On November 11, 1975, the suit was dismissed holding that the plaintiff did not have any title to the suit land which was the Government land. As a follow up action the Deputy Secretary, GAD, asked the Collector to declare the land situate in between the Secretariat and the Fisheries Department (which includes the land in dispute as the Government land) and accordingly on October 5, 1959, the Collector passed an order. On February 28, 1976 the Tahsildar, Hyderabad Urban Taluq, issued a notice to the appellant calling upon him to vacate the land in dispute. An order of eviction was passed against the appellant on May 28, 1977. That order was assailed in W.P. No. 1414 of 1977. The writ petition was allowed, but in the writ appeal, the Division Bench while opining that since there was a bona fide dispute of title to the land in dispute, it must be adjudicated upon by the civil Court, dismissed in writ appeal on November 14, 1983. The State, therefore, filed OS. No. 1479 of 1995 on the file of the IV Additional Judge, City Civil Court, Hyderabad, for declaration of title and for recovery of possession of the disputed land. But, after the advent of AP Land Grabbing (Prohibition) Act, the said suit was transferred to the Special Court by operation of law in view of Sub-section (8) of Section 8 of the Act and numbered as LGC No. 61 of 1990. The Special Court allowed the case in favour of the State

on April 16, 1993 and it was upheld by the Division Bench of the High Court in W.P. No. 5332 of 1993. Before the Special Court the appellant had taken up an alternative plea of prescription of title by adverse possession. The Apex Court having been of the view that a mere prima facie bona fide claim to the land alleged to be grabbed by a person cannot avert from being roped within the ambit of the expression "land-grabber" and what is germane is unauthorized occupation of a land without any lawful entitlement with a view to commit any of the acts enumerated inter alia in Section 2(e) of the Act.

43. In Satya Reddi's case (supra), it is no doubt true that it has been held that the land-grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement thereto and if such element is missing, it would not be a case of land-grabbing. The former judgment of the Apex Court in Lakshmana Bapuji's case (supra), has not been referred to, nor it is held otherwise. The judgment proceeded in accordance with the facts which are peculiar to that case.

44. As can be seen from the matrix of the said case, the appellant therein purchased the property from a person who claimed himself as the General Power of Attorney Holder of the owner of the land in dispute. That General Power of Attorney had been disputed seriously by another person who too claimed himself as the General Power of Attorney of the real owner. The appellant before the purchasing the land from the former General Power of Attorney Holder got a notice published in the newspaper inviting objections and when no objections whatsoever had been received from any corner, he purchased the property. Eventually it was held by the Apex Court that the appellant was not a land-grabber. Inasmuch as the appellant purchased the property by means of a regular registered sale deed and prior thereto he got a notice published in a newspaper inviting objections, it was a clear case where the appellant had not occupied the land unauthorisedly without any lawful entitlement thereto and with a view to do any of the acts that are enumerated inter alia in Section 2(e) of the Act unlike in Konda Lakshmana Bapuji 's case (supra). The ratio in both the cases shall have to be thus discerned from that matrix. We, therefore, see no cleavage in the view expressed by the Apex Court in both the cases.

45. In Konda Lakshmana Bapuji's case (supra), the possession of the appellant was obviously unauthorized and without any entitlement thereto and with a view to construct a house thereon. The person, who said to have executed a registered permanent lease deed in favour of the appellant, himself had no title, since the property stood registered as Government land. The purchaser from a grabber who innocently purchased the property bona fide for a valid consideration becomes also a grabber since his vendor was a grabber. Initial entry upon the land must be seen and the subsequent alienations are of no consequence and such alienees cannot set-forth a plea of bona fides having regard to the initial act of land-grabbing.

46. Having regard to the same, the requisite intention could be gathered from

the matrix. The Apex Court thus eventually held in Konda Lakshmana Babuji's case (supra), that the appellant was a grabber. Unlike the same, in Satya Reddi's case (supra) the possession of the disputed land by Satya Reddi, the appellant, was neither unauthorized nor without any entitlement thereto. He purchased the property under a registered sale deed. No knowledge to the effect that the power of attorney in favour of the executant purported to have been executed by the original owner was forged could be attributed to the appellant having regard to the fact that he had taken sufficient precaution by giving a paper notification inviting objections in regard thereto before purchasing the property. Therefore, neither intention to grab the land nor knowledge that the power of attorney of the executant of the sale deed was a fabricated one could be attributed to the appellant. It is thus fairly a case that the appellant cannot be called as a grabber. The ratio in both the cases shall have to be understood in that perspective.

47. The intention shall have to be discerned from out of the facts and circumstances. What is required having regard to the definitions of "Land-Grabber" and "Land-Grabbing" enjoined u/s 2(d) and (e) is unauthorised occupation of land without any lawful entitlement thereto with a view to illegally taking possession of such land for any of the purposes enumerated inter alia in Section 2(e) of the Act. So long as the position that it is not a strict liability stands, whether the person has the necessary intention or knowledge in committing an act of land-grabbing ultimately it remains to be seen as a question of fact to be decided with reverence to the facts of each case.

48. In the instant case, the entry made in the Town Survey Land Register shows the land in dispute as Government Abadi. Therefore action had been initiated by the Government against one Madhav Das the proclaimed owner thereof and obtained an order in L.G.O.P No. 194 of 1989 from the Special Court. Although the said order does not bind the respondent herein, it shall have to be taken into consideration so as to see whether the necessary intention or knowledge on the part of the State that it was entering into the possession of the land illegally and without any lawful entitlement thereto could be attributed or not. Having regard to the above referred facts, we are of the considered view that it is fairly a case where neither intention nor knowledge could be attributed to the State. It is also not a case where a show of title has been set up by the State. Therefore, the act on the part of the State in having taken possession cannot be termed as unauthorized occupation without any lawful entitlement thereto and with a view to perform any of the acts that have been enumerated inter alia in Section 2(e) of the Act. Under those circumstances, the inescapable conclusion that can legitimately be drawn is that the act on the part of the State in having entered into the land in question cannot be called as an act of land-grabbing. It may be reiterated here that the jurisdiction of the Special Tribunal/Special Court gets attracted only when there has been an act of land-grabbing committed and undoubtedly that jurisdiction which is vested with the Special Tribunal/ Special Court is exclusive and ousts the jurisdiction of the civil Court. De hors the act of committing land-grabbing, the jurisdiction obviously continues with the civil

Court. We may, however, hasten to add that it will not take away the rights of the respondent nor confer any right upon the State qua the land in dispute. It is still open to the parties to agitate their rights before a competent Civil Court having jurisdiction to decide the issue.

49. For the above reasons, the writ petition is allowed. However, there shall be no separate order as to costs.