

(1996) 08 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 22654 of 1994 and 741 of 1995

Tadi Surya Rao

APPELLANT

Vs

Dr. Gurubhavatula Ramakrishna Rao and Another

RESPONDENT

Date of Decision : 22-08-1996

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11
Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 10, 7(5D), 8(2)
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 23 Rule 4
Constitution of India, 1950 — Article 226

Citation : (1996) 2 ALD(Cri) 781 : (1996) 3 ALT 763 : (1996) 2 APLJ 257 : (1996) 1 APLJ 257

Hon'ble Judges : V. Rajagopala Reddy, J; M.N. Rao, J

Bench : Division Bench

Advocate : C. Poornaiah, for the Appellant; D.V. Seetharama Murthy, for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Rao, J.—These two writ petitions are inter-connected and so they are being disposed of by this common judgment.

2. Seeking a writ of certiorari for quashing the common judgment of the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, Hyderabad (for short "the Special Court") in L.G.C. Nos. 23 of 1993 and 68 of 1994, these applications were filed by Tadi Surya Rao, a resident of Visakhapatnam, who was declared by the Special Court as a "land grabber" within the meaning of Section 2(b) and (e) of the Andhra Pradesh Land Grabbing (Prohibition) Act, (for short "the Act") and was directed to deliver vacant possession of Plot Nos. 70 and 71 covered by approved lay-out bearing No. 61/64 situate at Narasimha Nagar, Viskhapatnam to Dr. Gurubhavathula Ramakrishna Rao (respondent No. 1 herein) applicant in L.G.C. No. 23 of 1993 before the Special Court or his nominee.

3. In the year 1991, Gurubhavathula Ramakrishna Rao, respondent No. 1 herein, filed L.G.C. No. 64 of 1991 before the Special Court in respect of the same property in question and a report was called for by the Special Court from the Mandal Revenue Officer, Visakhapatnam, which disclosed that one Dr. B. Perraju, the vendor of the first respondent, was the original pattedar of the property in question and the same was purchased by the first respondent and so the latter's title was also supported by the entries in the revenue records - fair adangal etc. That case was withdrawn by the first respondent as settled out of Court. The order of the Special Court dated 21-2-1992 in L.G.C. No. 64/91 was in the following terms:

"It is reported by the learned Counsel for the petitioner that the matter is settled out of Court. Hence the petition is dismissed as withdrawn."

4. Subsequently, alleging that the petitioner herein had encroached into the land in question on 18-9-1993, the first respondent instituted L.G.C. No. 23 of 1993 for a declaration that the petitioner was a land grabber and for consequential direction to handover vacant possession.

5. The petitioner had instituted a suit - O.S.No. 464 of 1991 - in the Court of the District Munsif, Visakhapatnam for a permanent injunction in respect of the very same property against Sri Ch. Venkateswara Rao, the power of attorney of Dr. Gurubhagavathula Ramakrishna Rao, the first respondent herein, contending that the property was purchased by him under an agreement of sale on 14-4-1973 from one G. Nookaiah for a valuable consideration of Rs. 5,780/-and since then, he has been in possession and enjoyment of the same and that Ch. Venkateswara Rao and his men were trying to dispossess him from the property. That suit was resisted by Ch. Venkateswara Rao contending in the written statement that the petitioner herein had no manner of right to the schedule property and that the suit was not maintainable since he -Venkateswara Rao - was only a Power of Attorney of Gurubhagavathula Rama Krishna Rao and so no action could be brought against him in his individual capacity. That suit was transferred to the Special Court to be tried along with L.G.C. No. 23 of 1993 and consequently it was renumbered as L.G.C.No. 68 of 1994.

6. In L.G.C.No. 23 of 1993, filed by the first respondent herein through his Power of Attorney, the case set up was that the land in question was purchased for a valid consideration of Rs. 6,000/- under a registered sale deed Ex.A-2, dated 26-9-1966 from Dr. Perraju and the transaction was effected after Dr. Ramakrishna Rao, the first respondent, who was in Government Service at that time, obtained permission from the Director of Medical Services on 29-9-1966 as per Ex.A-18. He had also paid the vacant land tax to the Visakhapatnam Municipality as evidenced by the tax demand notice, Ex.A-19. As Dr. Ramakrishna Rao went to the United States of America for higher studies in medicine and since he accepted employment there as a medical doctor, he executed a General Power of Attorney Ex.A-1 dated 23-7-1991 in favour of Ch. Venkateswara Rao to look after the property, since the latter happened to be his

friend's son. Exs.A-4 to A-6 are the encumbrance certificates for the period 1966-93. It was alleged that the petitioner, who was having a pan-shop in the road-margin abutting the National Highway No. 5 and very close to the land in question and taking advantage of that situation, filed a suit O.S.No. 464 of 1991 for a permanent injunction alleging that his possession was sought to be disturbed by Ch. Venkateswara Rao, the Power of Attorney of Ramakrishna Rao. When L.G.C.No. 64 of 1991 was filed for a declaration that the writ petitioner was a land grabber, there was an arrangement between Ch. Venkateswara Rao, the Power of Attorney, and the petitioner, where under the petitioner agreed to withdraw the suit - O.S. No. 464 of 1991 - and vacate the schedule property, for which he was paid Rs. 10,000/- in cash and a pay order for Rs. 70,000/- drawn in his favour was given to him as evidenced by Ex.A-22 document executed by the petitioner. It was the case of the first respondent that the petitioner had vacated the schedule land and, therefore, L.G.C No. 64 of 1991 was withdrawn. But later on, the petitioner changed his mind, returned the pay order and once again trespassed into the land necessitating the first respondent to file L.G.C.No. 23 of 1993.

7. The stand taken by the petitioner before the Special Court, as already indicated above, was that the property in question was purchased by him for a valid consideration of Rs. 5,780 /- (in the suit filed by him, the stand taken was that he purchased it for Rs. 6,000/-) under Ex.B-33, agreement of sale, dated 14-4-1973 from one Nookaiah. He also fixed the boundary stones, planted eucalyptus saplings and put up two thatched sheds three or four days after Ex.B-33. Since then, he has been living on that land with his family; his marriage had taken place there and his three sons also were born there itself. He alleged that on 24-4-1991, for the first time, Ch. Venkateswara Rao, the Power of Attorney of Ramakrishna Rao, came to the site in question and asked him to vacate and when he resisted showing Ex.B-33, Ch. Venkateswara Rao went away only to return once again on 30-4-1991 accompanied by about 20 persons and tried to pull down the thatched sheds. Then, there was an altercation which attracted the attention of a number of neighbours and as they advised Venkateswara Rao not to take law into his hands but settle the matter in a Court of law, Venkateswara Rao and his men went away. The petitioner lodged a verbal complaint with the police but he was advised by the police that as it was a civil dispute, he should pursue his remedy in a Court of law. He, therefore, filed the suit - O.S.No. 464 of 1991 - for permanent injunction. In the first instance, an interim injunction was granted but later on, it was vacated. In the C.M.A., the interim injunction was once again granted pending disposal of the appeal. But during the pendency of the appeal, Venkateswara Rao accompanied by Manohar Reddy, Vijaya Reddy and Bangari and also about 70 others came to the land in question on 13-5-1992 and threatened the petitioner to vacate the land and as he refused to do so, the sheds were pulled down and the trees were damaged. Immediately, he went to his advocate Mr. Gunneswara Rao, who advised him to issue a notice to the police and take photographs of the site evidencing the

damage. Two days later i.e., on 15-5-1992, the above three persons viz., Manohar Reddy, Vijaya Reddy and Bangari, followers of Venkateswara Rao, accompanied by some others came to the land, took forcibly the petitioner, his mother and his aunt to the house of one R.S. Rama Murthy, a document writer (P.W.3) and obtained their signatures on some blank stamp papers and blank white papers forcibly. They were also threatened by the aforesaid persons that if they were to disclose this to anybody, they would face dire consequences. On the papers on which their signatures were forcibly taken, the compromise Ex.A-22, was incorporated and, therefore, it was pleaded that the same was not a valid document and could not be relied upon. As already stated, the suit O.S.No. 464 of 1991 instituted by the petitioner was transferred to the Special Court and was renumbered as L.G.C.No. 68 of 1994.

8. Both the cases - L.G.C.No. 23 of 1993 and L.G.C.No. 68 of 1994 -were heard together by the Special Court. On behalf of the first respondent herein, Dr. Ramakrishna Rao, the owner of the land, five witnesses were examined and as many as 23 documents were marked in L.G.C.No. 23 of 1993.Ch. Venkateswara Rao, the Power of Attorney of B. Ramakrishna Rao, gave evidence as P.W.1. One B. Satyanarayana Sarma, who purchased Plot Nos. 77 and 78 (adjacent plots of Ramakrishna Rao's plot) from Dr. Perraju, the original vendor, was examined as P.W.2. The document writer, R.S. Rama Murthy, figured as P.W.3. The brother-in-law of the petitioner, one of the attestors of the compromise Ex.A-22, gave evidence as P.W.4. Sri K. Adi Babu, Advocate, Visakhapatnam, who claimed to have effected the compromise at the instance of the petitioner went into the witness box as P.W.5. The writ petitioner examined himself as R.W.1 and three other witnesses also he produced in support of his assertion that he was the owner of the land in question. One P. Toyajakshudu, who claimed that the petitioner's father and mother worked in his house as domestic servants, gave evidence as R.W.2 stating that the petitioner has been living on the land in question. K. Bapiraju, a resident of Visakhapatnam, testified as R.W.3 that the petitioner was living in the petition schedule property even during the year 1984. G. Varahalu, a document writer, figured as R.W.4 claiming himself to be the scribe of Ex.B-33, agreement of sale, between Nookaiah, the alleged original owner and the petitioner. 36 documents were got marked on his behalf. One document, Ex.C-1, the original vakalat of Adi Babu, Advocate, was marked through Court. In the transferred case -L.G.C.No. 68 of 1994 - the petitioner gave evidence as P.W.1 and eleven documents were marked on his behalf. On behalf of the opposite side, no witness was examined and no document was marked.

9. The Spedal Court has accepted the evidence adduced on behalf of the first respondent and disbelieved the case pleaded by the petitioner herein. Rejecting the contention that the documents Exs.A-15 and A-16 revenue records show that the land in question was recorded as "Government dry land" and in respect of such a land patta could not have been granted, the Special Court held that as patta was granted under Ex. A-17 on 8-9-1950 in favour of Dr. Perraju, it was not

open to the petitioner herein to contend that Dr. Perraju was not entitled for the patta. The first respondent herein, Dr. Ramakrishna Rao, had taken possession of the land pursuant to Ex. A-2, registered sale deed executed by Dr. Perraju. He was also permitted by the Director of Medical Services, Government of Andhra Pradesh, to purchase the property under Ex.A-18 as at that time, he was in Government service as a Civil Assistant Surgeon. He paid the vacant land tax to the municipality as disclosed by Ex.A-19 and that the encumbrance certificates Exs.A-4 to A-6 also show that Dr. Ramakrishna Rao was the owner of the land in question. That Dr. Perraju sold the land plotted by him as per the approved layout sanctioned by the municipality was also evident from the evidence of P.W.2, B. Satyanarayana Sarma, a relation of Dr. Ramakrishna Rao, Who purchased plot Nos. 77 and 78 situate near the land in question.

10. The Special Court further held mat the petitioner herein has no capacity to purchase the land. He had not paid the property tax or the vacant land tax. His father and mother were working as domestic servants and their total monthly income of Rs. 110/- was not sufficient to purchase the property. There are other members also in the family to be supported. By the date of Ex.B-33, the alleged agreement of sale dated 4-4-1973 executed by one Nookaiah for an alleged consideration of Rs. 5,780/-, the petitioner was a minor aged about 15 or 16 years and that his assertion that he spent Rs. 10,000/- for raising thatched sheds and Rs. 5,000/- in digging a well in the land within two or three days after taking possession of the land under Ex.B-33 was not entitled to any credence. The petitioner could not obtain a pucca sale deed pursuant to Ex.B-33 agreement of sale since he had no funds. No municipal number was assigned to the sheds allegedly put up by the petitioner on the land in question and that he was not living on the land in question. It was pointed out by the Special Court that the petitioner's father was sanctioned a site of 45 sq. yards under the Housing Scheme for Weaker Sections, in which a shed was constructed to which a municipal number also was assigned and that property is also in Narasimha Nagar wherein the land in question is situate. The documents filed by the petitioner showing his address as Narasimha Nagar could not lead to the conclusion, according to the Special Court, that he was living on the land in question since the sheds allegedly put by him on this land were not assigned any municipal number. The compromise, Ex.A-22, and the evidence of the advocate, Adi Babu, P.W.5, the scribe P.W.3, who wrote the document, and P.W.4, one of the attestors of Ex.A-22, was believed by the Special Court. That the petitioner herein had changed his mind after executing the compromise, Ex.A-22 under which he had taken cash of Rs. 10,000/- and a pay order for Rs. 70,000/- was the conclusion reached by the Special Court and one of the circumstances about the genuineness of the transaction as evidenced by the testimony of P.Ws.1, 3 to 5 is Ex.A-23, certificate dated 18-9-1994 issued by the Syndicate Bank that a pay order for Rs. 70,000/- was drawn in favour of the petitioner herein on 15-2-1992. The plea that Ex.A-22 compromise was obtained forcibly and that was the reason why there are blanks at serial Nos. 2 and 4 under the head

"attestors" in Ex.A-22 did not merit the acceptance of the Special Court. Adverting to the contention that as L.G.C.No. 64 of 1991 filed in the first instance was withdrawn without obtaining the permission of the Special Court to file a fresh case, the subsequent case viz., L.G.C.No. 23 of 1993 was not maintainable, the Special Court held that as the petitioner had vacated the schedule property in L.G.C.No. 64 of 1991, the same was withdrawn and since he re-entered, the subsequent case was instituted and, therefore, there was no bar for the maintainability of the second case.

11. Addressing elaborate arguments, Sri Poornaiah, learned counsel for the petitioner, while taking us through the evidence, has contended that the impugned judgment of the Special Court was vitiated on three grounds:

(i) L.G.C.No. 23 of 1993 filed by the first respondent was not maintainable since the permission of the Special Court was not obtained under Order XXIII, Rule 4 of the CPC for] bringing up fresh action when the earlier case - L.G.C.No. 64 of 1991 - was dismissed as withdrawn by the Special Court on 21-2-1992;

(ii) Ex.A-22, the alleged compromise deed, pursuant to which the petitioner allegedly had vacated the land in question was the result of coercion and fraud in that the signatures of the executant (the petitioner) and the attestors, P.W.4 and another were obtained on blank papers and subsequently the contents were incorporated; and

(iii) The disputed land, which forms part of a larger extent covered by Survey No. 539 for which patta No. 1114 was granted by the Settlement Officer in favour of Dr. Perraju, the first respondent's vendor, is a Government land in respect of which no patta could be granted u/s 11 of the Estates Abolition Act.

12. Sri D.V. Sitarama Murthy, the learned Counsel for the first respondent, controverting the aforesaid contentions has urged that the Special Court is not bound by the provisions of the CPC and it can, as per the provisions of Section 7(5-D) of the Act, follow its own procedure not inconsistent with the principles of natural justice and fair play and subject to the other provisions of the Act. The Special Court has exhaustively dealt with all the aspects of the case and after assessing the entire evidence, has concluded that the petitioner herein is a land grabber and there are absolutely no grounds to doubt the genuineness of Ex. A-22, the compromise deed, pursuant to which the petitioner had vacated the land in question. The patta granted in favour of Dr. Perraju as far back as 1950 could not be the subject matter of controversy collaterally after four decades. At any rate, it was not open to the petitioner, who had absolutely no semblance of title or right to possession, to question the patta granted in favour of the first respondent's vendor in 1950.

13. The Act is a special law intended, inter alia, to curb activities of individuals and groups, who, either by force or by deceit or otherwise, grab lands, particularly urban and urbanisable, belonging to private individuals, religious or charitable institutions, local authorities or the Government, as stated in the

statement of objects and reasons. "Land grabbing" is defined by Clause (e) of Section 2 as comprehending every activity of grabbing of any land of the kind stated above by a person or group of persons without any lawful entitlement and with a view to illegally taking possession of such land or to construct unauthorised structures thereon for sale or hire. Section 3, while declaring land grabbing in any form as unlawful, lays down that every activity connected with or arising out of land grabbing is a penal offence for which a person, on conviction, is liable to be sentenced u/s 4 with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine which may extend to Rs. 5,000/-. Section 7 empowers the State Government to constitute a Special Court for the purpose of speedy enquiry and trial of cases in respect of "ownership of and title to or lawful possession of the land grabbed". The Special Court consists of a Chairman and four other members appointed by the Government. The Chairman shall be a person who is or has been a Judge of a High Court and of the other four members, two shall be persons who are or have been District Judges (Judicial Members) and the other two shall be persons, who hold or have held the post not below the rank of District Collector (Revenue Members). Sub-section (5-D), while laying down the obligation of the Special Court to follow the provisions of the Act and the rules made thereunder while deciding civil liability, empowers it, notwithstanding anything contained in the Code of Civil Procedure, to follow its own procedure, which shall not be inconsistent with the principles of natural justice and fair play. We are not concerned with the provisions relating to the procedure to be followed while determining the criminal liability of an alleged land grabber. Any decision rendered by the Special Court concerning determination of the question of title to and ownership of or lawful possession of any land grabbed shall be final notwithstanding anything in the CPC and the Code of Criminal Procedure, as per Section 8(2). Where there is prima facie proof that the land belongs to the Government or a private person and when there is an allegation that such land has been grabbed, the Special Court, u/s 10, shall presume that the person, who is alleged to have grabbed the land, is a land grabber and the burden of proof that the land has not been grabbed shall be on such person. By Section 15, the provisions of the Act have over-riding effect notwithstanding anything inconsistent therewith contained in any law for the time being in force or custom, usage or agreement or decree or order of a Court or any other tribunal or authority.

14. Before considering the rival contentions urged by the learned Counsel for both sides, we must restate the well accepted legal principles concerning the limits of the power of judicial review, since the matter at length has been argued by Sri Poornaiah, learned Counsel for the petitioner, drawing our attention in extenso to the evidence, endeavouring to convince us to take a view different from the one arrived at by the Special Court. As the questions determined by the Special Court attained finality by virtue of Section 8(2) of the Act, any enquiry by us of a nature akin to the exercise of appellate jurisdiction is plainly forbidden.

15. The celebrated passage from the judgment of Lord Atkin in *R v. Electricity Commissioners* 1924 (1) K.B. 171 at 204 serves as the foundation in the modern times for the issue of a writ of Certiorari:

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

The duty to act judicially may arise in varied situations and it is difficult to define precisely, the circumstances under which such duty may arise. Each case turns upon its own facts. Gajendragadkar, J., (as he then was) in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, after reviewing the case law, has stated the legal position for issue of a writ of certiorari under Article 226 of the Constitution of India:

"A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals; these are cases where orders are passed by inferior Courts or tribunals without jurisdiction, or is in excess of it or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is however no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or tribunal as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.....if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari" but "a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court."

Elaborating what is meant by an error apparent on the face of the record, the learned judge held:

"Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the

impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record."

16. Stating that in judicial review, the Court is not concerned with the decision but with the decision making process, Lord Brightman held in *Chief Constable v. Evans* (1982) 1 W.L.R. 1155 :

"Judicial review is concerned not with the decision but with the decision making process. Unless that restriction on the power of the Court is observed, the Court will, in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power".

The permissible grounds on which the power of judicial review could be exercised were stated by Lord Diplock in *C.C.S.U. v. Minister for Civil Service* 1985 A.C. 374 : (1) illegality; (ii) irrationality; and (iii) procedural impropriety. Accepting the parameters for the exercise of the power of judicial review as held by the British Courts, our Supreme Court held in *Dwarkanadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, :

"It is not within the purview of a Court to substitute the decision taken by a constituted authority simply because the decision sought to be substituted is a better one."

17. In the light of these legal principles, we have to decide the questions raised in these cases.

Re (1):

18. The first case - L.G.C.No. 64 of 1991 - instituted by the first respondent before the Special Court as already stated was dismissed by the Special Court on 21-2-1992 observing:

"It is reported by the learned Counsel for the petitioner that the matter is settled out of Court. Hence the petition is dismissed as withdrawn."

While granting permission to the first respondent to withdraw the case, the Special Court did not state that he was at liberty to institute a fresh case in respect of the same subject matter. Had it been a regular civil suit, the first respondent, by virtue of Rule 4 of Order XXIII of the Code of Civil Procedure, would have been "precluded from instituting another fresh suit in respect of the same subject matter". The argument of Sri Poornaiah, learned Counsel for the petitioner, that following the provisions of Order XXIII, Rule 4, we must hold that the subsequent case instituted by the first respondent - L.G.C.No. 23 of 1993 - was not maintainable, does not merit acceptance. The Act does not mandate the Special Court to follow the procedure laid down in the Code of Civil Procedure. On the other hand, as already noticed, Sub-section (5-D) of Section 7 empowers the Special Court, notwithstanding anything contained in the Code of Civil Procedure, to follow its own procedure which shall not be inconsistent with the

principles of natural justice and fair play. It could not be said that failure to follow the provisions of Order XXIII, Rules 3 and 4 of the CPC would amount to breach of principles of natural justice or fair play. We, therefore, agree with the Special Court that the withdrawal of L.G.C.No. 64 of 1991 without obtaining the permission to file a fresh case is not a bar for the maintainability of the subsequent case - L.G.C.No. 23 of 1993.

Re (2):

19. Ex. A-22, compromise deed, according to Sri Poornaiah, learned counsel for the petitioner, was the result of fraud and coercion and, therefore, it was not entitled to any credence. We do not agree. Ex.A-22 was executed by the petitioner herein. It says that as his case is weak, he has compromised the matter with the first respondent subject to the terms recited therein. The petitioner agreed to give up his claim in respect of the land in question and as a quid pro quo, accepted a pay order for a sum of Rs. 70,000/- drawn in his favour dated 15-5-1992 of the Syndicate Bank (D.No. 055661/1012). It is also recited in Ex.A-22 that neither the petitioner nor his heirs or representatives in interest has any claim in respect of the land. The circumstances under which this document came to be executed were explained by P.W.1, Venkateswara Rao, the power of attorney of the first respondent, P. W.5, Adi Babu, Advocate, who at the relevant time, was appearing for the writ petitioner in the Civil Courts at Visakhapatnam, P.W.3, the scribe at whose house the document was executed and P.W.4, who is none else than the brother-in-law of the petitioner and one of the attestors of the document. The other attestors are the mother and aunt of the petitioner. The petitioner as R.W.I, in his evidence, had asserted that the document was the result of fraud and coercion; his signatures and the signatures of his mother and aunt were obtained on blank papers on 15-5-1992 at the house of P.W.3. The evidence of the witnesses concerned with this document was critically examined by the Special Court, which recorded a finding that Ex.A-22 is a genuine document and that there was a reference to that document in Ex.B-36, letter written by the Advocate, Sri Adi Babu, P.W.5, to R.W.1, the petitioner. Adverting to the circumstances under which Ex.B-36 was written in which there is a reference to the compromise deed Ex.A-22, the Special Court observed:

"This document categorically speaks to the execution of Ex.A-22 agreement though the contents of Ex.B-36 and the evidence adduced by the applicant may not agree in all particulars, suffice to state that Ex.B-36 speaks of the execution of Ex.A-22, wherein the terms of compromise are stated in detail."

Another circumstance stated by the Special Court for believing Ex.A-22 is the evidence of P.W.4, who is none else than the brother-in-law of the petitioner. After discussing the evidence on this aspect, the Special Court held:

"We are not inclined to accept the case of R.W.1 that signatures of R.W.1 and the L.T. Is of the mother and aunt of R.W.1 were taken on blank stamp papers and white papers as stated by R.W.I. The first attestor to Ex.A-22 is no other

than P.W.4 while the mother and aunt of R.W.1 were the 3rd and 5th attestors to Ex.A-22. It is in evidence that at places shown as Nos.2 and 4, for obtaining attestation of the relations of R.W.I, blanks were left, stating that R.W.1 promised to obtain attestations of his near relations thereon."

The Special Court recorded the finding:

"Thus, Ex.A-22 read with Ex.B-36 and the other documentary and oral evidence show that the applicant was the owner of the schedule property, R.W.I vacated the same as per Ex.A-22, arrangement, but of course, changed his mind and reentered the schedule property for reasons best known to him. In view of this oral and documentary evidence, we find on Issue No. 1 in L.G.C.No. 23 of 1993 that the applicant is the owner of the application schedule property."

In passing, we might mention that in the course of the arguments, Sri Poornaiah, learned Counsel for the petitioner, has stated that on the documents of the nature of Ex.A-22, the signatures of the witnesses would only be on the right side but not on the left side. We immediately pointed out to him that Ex.B-33, the alleged agreement of sale in favour of the petitioner, also contains the signatures of the witnesses on the left side like Ex.A-22 and nothing turns upon this aspect. We cannot once again reappraise the evidence to decide whether the credence given to Ex.A-22 by the Special Court was afflicted with any infirmity giving rise to its rejection. The Special Court has properly directed itself to the question at issue, scrutinised minutely the evidence adduced on both sides and recorded a finding, which is not afflicted with the vice of unreasonableness, irrationality or procedural impropriety nor any breach of principles of natural justice is involved - the writ petitioner was afforded full opportunity to lead evidence in support of his case.

Re (3):

20. The contention of Sri Poornaiah, learned Counsel for the petitioner, that u/s 11 of the Estates Abolition Act, which concerns grant of Ryotwari pattas, no patta can be granted in respect of any land recorded as Government land in the revenue records, in our view, cannot be gone into in these writ petitions. The petitioner was not a rival claimant for the land in question before the statutory authorities nor any evidence was brought on record as to the circumstances under which patta was granted in respect of Survey No. 539 in favour of Dr. Perraju, the vendor of the first respondent. The grant of patta was as far back as 1950. The revenue authorities, it must be presumed, must have taken into consideration all the relevant facts and circumstances for registering the name of Dr. Perraju as the pattedar in respect of Survey No. 539 on 8-9-1950. The document Ex. A-17, which describes the land as Government dry also is the very same document under which patta was also granted to Dr. Perraju. Four decades later, at the instance of the petitioner, this question cannot be gone into. Even the Government would not have been in a position to dispute the patta granted in favour of Dr. Perraju at this distance of time, since it was barred by limitation.

The rulings cited by Sri Poornaiah viz., *Elumalai Chetty v. Rathnavelu Chetty* 1971 (2) An.W.R. 193 *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, and *Chakala Anjappa v. B. Anjappa* 1990 (2) An.W.R. 98 : 1990 (2) APLJ 140 in support of his contention that u/s 11 of the Estates Abolition Act, in respect of Government land, no patta can be granted, are of no help to the petitioner.

21. The first respondent adduced acceptable evidence as to his title to the land. After obtaining permission from the Government, he purchased the land by a registered sale deed. The permission accorded by the Government was also established. He has been paying tax to the municipality in respect of which documentary evidence was brought on record. The land is an open land and close-by, the petitioner had a {tan-shop. The documents evidencing title and payment of taxes to the municipality amply establish the claim of the first respondent that he has been in possession of the land in question. His power of attorney, P.W.1, has testified that he was looking after the property. In such a fact situation, the burden of proof shifts to the petitioner u/s 10 of the Act. In *K. Narsingh v. Spl. Court Under A.P. Land Grabbing (Prohibition) Act*, we have held:

".....it is clear that the offence of land grabbing is complete, if, on a consideration of evidence on record, it is found that the person who approached the Tribunal is "prima facie" proved to be the land owner and that the offender is found to be in possession of such land. The Tribunal shall presume that such person is a "land grabber". Immediately, the burden of proving that he has not grabbed the land and that he is the owner of the said land, shifts to such a person. The offence of land grabbing consists in occupying a land by a person without any lawful entitlement"" (per V. Rajagopala Reddy. J.)

22. The Special Court was enjoined u/s 10 of the Act to presume that the petitioner is a land grabber having regard to the evidence produced by the first respondent herein but the petitioner has not discharged the burden that lay upon him. He has no title. There was no document evidencing registration of the land in favour of the petitioner pursuant to Ex.B-33, the alleged agreement of sale. He had no financial capacity to purchase the land. On the date of Ex.B-33, dated 14-4-1973, he was only a minor and both his parents were working as domestic servants and their monthly total remuneration was Rs. 110/-and there were other members of the family to be supported. His claim that three days after Ex.B-33, he put up thatched sheds and dug a well on the land incurring an expenditure of Rs. 15,000/- was utterly unbelievable. The Special Court has considered all these aspects, accepted the claim of the first respondent and rejected the version set up by the petitioner. We do not find any justifiable grounds, whatsoever, to interfere with the conclusions recorded and views expressed by the Special Court.

23. For these reasons, both the writ petitions fail and accordingly they are dismissed with costs.