

SUPREME COURT OF INDIA

Mahalaxmi Motors Ltd

Vs.

Mandal Revenue Officer

(S.B. Sinha and Harjit Singh Bedi JJ.)

10.10.2007

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. Interpretation and/or application of the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short, the Act) is involved in this appeal which arises out of a judgment and order dated 30.04.2007 passed by the High Court of Andhra Pradesh in Writ Petition (Civil) No. 15920 of 2004.

Facts :

3. The land bearing Survey No. 82 situate in village Bowenpally and Survey No. 157/1 situate in Village Thokatta appurtenant to Trimulgherry Mandal, Hyderabad, admeasuring 7788 sq. metres were inam lands. The said lands vested in the State of Andhra Pradesh upon coming into force of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short, the 1955 Act) with effect from 20.07.1955.

4. One B. Ramender Reddy and several others were claiming ownership of the said lands purported to have acquired title of the Inamdars. They sought for the grant of occupancy certificate from the State. The application filed in that behalf was rejected by the Collector.

5. Ramender Reddy, however, transferred his purported right, title and interest in the said lands by reason of two registered deeds of sale dated 03.01.1985 and 05.01.1985 in favour of the appellant, which is a company registered and incorporated under the Companies Act, 1956.

6. Despite the fact that Ramender Reddy had already transferred his right, title and interest in favour of the appellant-company by reason of the aforementioned deeds of sale, he along with some others, who were also claiming similar rights, filed writ petitions before the Andhra Pradesh High Court being Writ Petitions Nos. 8734 to 8737 of 1983 etc. The said writ petitions were dismissed by reason of a judgment and order dated 06.03.1987 by a learned Single Judge of the said Court opining that in view of Section 3(1) of the 1955 Act the lands in question had vested in the State. The said judgment attained finality. Even a Special Leave Petition preferred thereagainst has been dismissed by this Court.

7. Appellant, however, despite knowledge of the said judgment and order dated 06.03.1987 allegedly made huge investments by raising construction thereupon. A notice under the Andhra Pradesh Land Encroachment Act, 1905 was issued on it on 27.04.1987, wherein the company was described as an encroacher of the land in question. Questioning the legality of the said notice, a writ application was filed by the appellant, which was marked as Writ Petition No. 5954 of 1987.

8. We may observe that during the pendency of the said writ petition, the appellant filed an application for regularization of the said land before the State, relevant recitals whereof are as under :

We are informed by the Honourable Mandal Revenue Officer that an extent of 781 sq. mtrs. Land is a Government land in the Workshop and that the possession thereof must be delivered to the Government.

It is respectfully submitted that the workshop has been functioning for last 10 years at the aforesaid S. Nos. and the portion said to be belonging to the Government is abetting the main road and if the same is taken over by the Government it will make impossible for us to have an access to the workshop apart therefrom it will not be possible for us to utilize the workshop.

In the circumstances we request you to kindly Sir, to regularize the ownership of that land and we are agreeable to pay a reasonable compensation to the Government for the land abutting the main road and the land to our extent of 1485.08 sq. mtrs. in the same survey no. which is lying vacant because if it is allotted to somebody then we will not have our access to our workshop.

If the land is not allotted to us the entire business of the company will be greatly affected and many families, depended will be put to great loss and hardship.

In this connection we also wish to bring to your kind attention that the land was initially inhabitable and unusable being full of boulders and rocks and after spending huge sums we had made it suitable for construction purpose. This aspects may kindly be kept in view while fixing the reasonable compensation payable by us for the said land.

9. In response thereto, the appellant was asked to withdraw his writ petition, being Writ Petition No. 5954 of 1987, so as to enable the Government to examine the issue of regularization of the possession, subject of course, to the payment of the market value of the land. Appellant, however, did not withdraw the said writ application. Despite the same, the Collector allegedly made recommendations for regularization of the land in favour of the appellant, stating :

The Petitioner informed that the matter has been brought to the Supreme Court and is pending. This Office has no information with regard to the filing of case in the Supreme Court. However, the land is Inam land which is already vested with the Government and possession has been assumed during the year 1987. Since the Petitioner is a purchaser of the said land (partly) and has filed undertaking to pay the prevailing Market value regularization of the land in Sy. No. 82 Bowenpally village can be considered subject to outcome of the decision of the Supreme court, if any. According to basic valuation register in the above vicinity the Market value is @ Rs. 500/- to Rs. 850/- per sq. yard for the years 1991-92 and between Rs. 780/- to Rs. 1240/- per sq. yard in the year 1993.

Therefore the lands in Sy. No.157/1 to an extent of 2763 sq. yards and land in Sy. No. 82 of

Bowenpally village to an extent of 7728 sq. yards i.e. total 10491 sq. yards or 8772 sq. mtrs. is recommended for regularization on payment of Market value @ Rs. 1240/- per sq. yard in favour of the M/s Mahalaxmi Motor Private Limited in relaxation of ban orders issued in G.O.Ms. No. 634 Revenue (Ann-III) Department dt. 2.7.1990.

10. The said writ petition was dismissed by the High Court by a judgment and order dated 04.06.1996, holding :

As the vendor of the Petitioner have (sic) failed to get occupancy certificate in their favour, the Petitioner who is claiming under its vendor cannot obtain any relief in this writ petition. The writ petition therefore fails, and is accordingly dismissed.

However, the Petitioner is granted six weeks time for obtaining appropriate orders from the concerned authorities.

11. Prayer of the appellant for regularization of the land was rejected by the State by an order dated 06.12.1999. Aggrieved by and dissatisfied therewith, the appellant filed another writ application before the Andhra Pradesh High Court, which was marked as Writ Petition No. 15 of 2000.

12. During the pendency of the said proceedings, the First Respondent herein initiated a proceeding in terms of Section 8(1) of the Act before the Special Court, praying, inter alia, for the following reliefs : (i) Declare that the respondent is land grabber. (ii) Evict the respondent from the application scheduled land.

(iii) Award compensation of Rs. 20/- per sq. meters per month from 1985 for the wrongful possession of the land in question.

(iv) Award cost of this petition.

(v) Punish the respondent under sub-section (3) of Section 4 of the Act.

(vi) Pass any other relief or reliefs as the Honble Court may deem fit and proper in the circumstances of the case.

13. Appellant filed its written statement in the said proceeding, contending that the provisions of the said Act were not applicable.

14. On or about 30.07.2001, inter alia, on the premise that the aforementioned order dated 06.12.1999 was not a speaking one, while allowing the writ petition No. 15 of 2000, the High Court remitted the matter to the State Government for consideration of the appellants prayer for regularization afresh having regard to the recommendations of the Collector dated 22.10.1994 and that of the Commissioner dated 30.09.1997 within a period of two months.

15. It is not in dispute that only recently, namely, on 03.08.2007, the said prayer of the appellant for regularization of the land has been rejected.

16. Before the Special Court, the appellant, inter alia, raised the following contentions :

(i) The petitioner did not enter upon the land suddenly or unscrupulously but through registered sale deeds and it was not a land grabber as defined in Section 2(d), (e) and (i) of the Act.

(ii) The sale deed clearly showed that the Petitioners were in uninterrupted possession of the land since 1985, while its predecessors-in-title were in possession since 1960s. The predecessors-in-title had not been impleaded in LGC No. 7 of 2000.

(iii) The Petitioners application for regularization was pending before the Government and the definitional requirement of a Land Grabber had not been fulfilled.

(iv) The initial burden of proving that the Petitioner was a Land Grabber as mandated by Section 10 of the Act had not been fulfilled.

(v) The Petitioner was a bona fide purchaser of the property for valuable consideration and huge amount of money has been spent to develop the land for an automobile workshop.

(vi) The Respondents had not initiated proceedings against the Petitioner for over 12 years.

17. In view of the pleadings of the parties, the Special Court framed the following issues :

(i) Whether the Applicant has title to the application schedule land?

(ii) Whether the rival title set up by the Respondent is true, valid and binding?

(iii) Whether the Respondent is a land grabber within the meaning of the Act XII of 1982?

(iv) In the event of success, whether the Applicant is entitled to the compensation as claimed?

(v) Whether any direction can be given by this Court for regularization in terms of G.O. Ms. No. 508 and 972?

(vi) To what relief?

18. By a judgment and order dated 11.08.2004, the Special Court allowed the said application of the First Respondent, holding : Thus, it is clear that the vendor of the respondent failed to get Occupancy Certificate of the application schedule property and he has no title to sell the same. In Ex. B. 4 in para 7 of the Honble High Court categorically held stating it is not in dispute that the petitioner has purchased the land in 1985, but it was finally declared that the land belonged to the Government. Thus, the very document relied by the respondent herein under Ex. B. 4 clearly indicates that the application schedule land is a Government land. The very fact that he applied for regularization of the application schedule land clearly indicates that the respondent having recognized the Government as titleholder of the application schedule land applied for regularization of the same as he occupied the land since more than 14 years and running garage. Thus, the very testimony of PW 1 clubbed with the documentary evidence Exs. A1, A2 Pahanies, A3 village Map of Bowenpally and Thokatta Villages, A.4 rough sketch showing the application schedule land clearly establishes that the application schedule land is a Government land. But this petition is filed in the year 2000 and as his possession of the application schedule land is for 14 years, he is not entitled to raise the plea of adverse possession.

The Special Court further held :

In view of our discussion on issues 1 and 2 as it was established that respondent is in possession of the application schedule land without any legal entitlement, he can be ranked as land grabber within the meaning of the Act. The applicant did not adduce any evidence for grant of compensation. There is no iota of evidence in this regard. In view of the provisions of the A.P. Land Grabbing (Prohibition) Act, the Special Court has no jurisdiction to give any direction to the Government, who is the owner and who got title over the property for regularization of the land. But the learned counsel for the respondent contended that above said proceeding for regularization is pending before the Government. It is a matter between the Government and the respondent. As the respondent is in possession of the application schedule land without any legal entitlement it can be dubbed as land grabber within the meaning of the Act and liable for eviction and ordered accordingly.

19. A writ petition filed thereagainst by the appellant before the Andhra Pradesh High Court, which was marked as Writ Petition No. 15920 of 2004, has been dismissed by reason of the impugned judgment.

Submissions :

20. Mr. Shyam Divan, learned Senior Counsel appearing on behalf of the appellant, raised the following contentions in support of the appeal : (i) The learned Special Court as also the High Court committed a manifest error in passing the impugned judgment insofar as they failed to take into consideration that the first respondent neither pleaded nor proved the ingredients of the terms land grabber and land grabbing as defined in the said Act.

(ii) The averment to the effect that the appellant had allegedly encroached the Government land was not sufficient to establish the existence of the essential ingredients of the provisions of the said Act that the appellant had any intention or knowledge to take possession of the land in question illegally.

(iii) Appellant herein, having entered into the possession pursuant to two registered deeds of sale and having been allowed to take possession and raise constructions upon expending a large sum of money, must be held to be acted bona fide being under the impression that he had a right to do so. It was, therefore, not a case where the appellant had taken possession of the land belonging to the Government, unauthorizedly, unfairly and greedily or snatched forcibly, violently or unscrupulously the subject land or that it was a successor in interest of any such person. (iv) Factual possession alone being not only the ingredient of the provisions of the said Act, but intention of the person who is alleged to have grabbed the land being imperative, the impugned judgment cannot be sustained.

(v) The Special Court having not determined the second ingredient of Land Grabbing, namely, the intention of the person who is alleged to have grabbed the land, the impugned judgment cannot be sustained.

(vi) The application for regularization of the land in question having been pending before the State Government, no application under Section 8 of the Act was maintainable.

(vii) Only because the appellant had filed an application for regularization of the said land, the same by itself could not be a ground to arrive at a finding that it had an intention to grab the said land as far back as in the year 1985.

(viii) Despite the order dated 30.07.2001, passed by a learned Single Judge of the Andhra Pradesh High Court in W.P (Civil) No. 15 of 2000 directing the State Government to pass a speaking order on the appellants application for regularization in the light of the recommendations made by the Collector as also the Commissioner, the State Government having failed to do so, the learned Special Judge should not have adjudicated upon the issue of land grabbing in the said proceeding.

21. Mr. Gopal Subramaniam, learned Additional Solicitor General, appearing on behalf of the respondents, on the other hand, submitted : (i) The provisions of the Act must be read harmoniously and so read, it would be evident that the purported second element of the definition would only mean that a person had taken possession of the land without any lawful entitlement. (ii) Intention to illegally occupy the land in question cannot be the sine qua non for determining the meaning of the term land grabbing under the Act, as has been contended on behalf of the appellant in this case, inasmuch once a person comes to know that his predecessor in interest had no title to the land in question, his possession would become illegal. (iii) The contention of the appellant that during the pendency of regularization proceeding, the State should not have initiated the proceeding before the Special Court, cannot be accepted as :

(a) Firstly, the responsibility to check its vendors title was on the Petitioner. The doctrine of constructive notice would also operate against the Petitioner. If it failed to discharge its responsibility, the Petitioner cannot claim to have acted without an intention to illegally occupy State property.

(b) Any other interpretation would completely frustrate the Act itself. It would effectively mean that as long as the land grabber is able to sell the land to a third party, no one can be proceeded against under the Act. Such an interpretation must be avoided.

(c) In any event, the fact is that Petitioner was aware in 1987 that it was illegally occupying State property. From that time onwards, its intention to continue to occupy the property is clear. And the Respondents only commenced these proceedings in 2000, when it was clear that the Petitioner had no intention of vacating the land and handing over the same to its rightful owner, the State. This is precisely the evil the Act aims to tackle.

(d) There is no provision in the Act that enables the Special Court to direct the State to regularize an illegal occupancy. That is not the function of the Special Court. As the Special Court pointed out, if the Petitioner has a grievance in that regard, he should approach the appropriate forum. This cannot be used as a defence in land grabbing proceedings.

Statutory provisions :

22. The said Act was enacted to prohibit the activity of land grabbing in the State of Andhra Pradesh and to provide for matters incidental thereto and connected therewith.

23. Clauses (c), (d) and (e) of Section 2 of the Act define land, land grabber and land grabbing respectively in the following terms : (c) land includes rights in or over land, benefits to arise out of land and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth;

(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 abets the doing of any of the above mentioned acts; and also includes the successors in interest.

(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 licences agreement 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.

Section 3 of the Act provides for land grabbing to be unlawful in the following terms :

3. Land Grabbing to be unlawful :- Land grabbing in any form is hereby declared unlawful; and any activity connected with or arising out of land grabbing shall be an offence punishable under this Act.

Section 4 of the Act provides for prohibition of land grabbing in the following terms :

4. Prohibition of land grabbing :- (1)_ No person shall commit or cause to be committed land grabbing.

(2) Any person who, on or after the commencement of this Act, continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment including a wakf, or other private person, shall be guilty of an offence under this Act.

(3) Whoever contravenes the provisions of sub- section (1) or sub-section (2) shall on conviction, be punished 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 five thousand rupees.

Section 7 provides for constitution of special courts, relevant portion whereof, insofar as the same is relevant for the present discussions, is reproduced as under :

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

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(5-D)(i) Notwithstanding anything in the Code of Civil Procedure, 1908 (5 of 1908) the Special Court may follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play and subject to the other provisions of this Act and of any rules made thereunder

while deciding the civil liability.

Section 8 of the Act provides for procedures and powers of the Special Courts, relevant portion whereof, insofar as the same is relevant for the purpose of the present case, reads as under : 8. Procedure and powers of the Special Courts .(1) The Special Court may, either suo motu or on application made by any person, officer or authority take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit;

(1-A) The Special Court shall, for the purpose of taking cognizance of the case, consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved or in the interest of justice required or any other relevant matter: Provided that the Special Court shall not take cognizance of any such case without hearing the petitioner;

(2) Notwithstanding anything in the Code of Civil Procedure, 1908 the Code of Criminal Procedure, 1973 or in the Andhra Pradesh Civil Courts Act, 1972, any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land grabbed under this Act, shall be triable only in a Special Court constituted for the area in which the land grabbed is situated; and the decision of the Special Court shall be final. *** **

(2-C) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed. The evidence admitted during the criminal proceeding may be made use of while trying the civil liability. But additional evidence, if any, adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability. Any person accused of land grabbing or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charge made against him or any person charged together with him in the criminal proceeding: Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any of the parties or the Special Court or give rise to any presumption against himself or any person charged together with him at the same proceeding.

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

Section 15 provides for Acts overriding effect over other laws.

Section 17-B of the Act provides for the guidelines for interpretation of the Act in the following terms :

17-B. Guidelines for interpretation of Act :- The Schedule shall constitute the guidelines for the

interpretation and implementation of this Act.

Precedents :

24. Interpretation of the provisions of the said Act and in particular the definitions of land grabber and land grabbing came up for consideration before a Division Bench of this Court in *Konda Lakshmana Bapuji v. Government of Andhra Pradesh and others* [(2002) 3 SCC 258].

We would examine the said decision in a bit detail. In that case the Special Court opined that the occupation of the land in dispute claimed by the appellant therein was without any lawful entitlement. It also decided the question of ownership and title to lawful possession of the land in dispute on appreciating the evidence on record. It was held that the land in dispute is not a part of Inam. A finding of fact was recorded in regard to absence of lawful entitlement of the appellant to the land and upholding the title of the respondent that the land in question was a Government land. A writ petition was filed thereagainst which was dismissed. This Court while considering the appeal preferred by the land grabber, inter alia, held :

(i) The Special Tribunal has only civil jurisdiction and the Code of Civil Procedure is applicable to the proceedings before it, whereas the Special Court has both the Civil as well as criminal jurisdiction to which the provisions of both the Code of Civil Procedure and Code of Criminal Procedure would apply.

(ii) The Special Court exercises both the original and appellate jurisdictions as well as court of sessions for all practical purposes. (iii) A mere allegation of land grabbing is sufficient to invoke the jurisdiction of the Special Court.

(iv) The Civil Courts jurisdiction is ousted and the Act, which is a special law, would prevail and as such the Special Court has jurisdiction in respect of the matter dealt with thereunder. (v) In terms of Section 10 of the Act, the burden of proof is on the person who alleges that the land has not been grabbed by him. (vi) The provisions of the Act not only deals with an action of a wrong but also an offence. The definitions contained in Section 2(d) and 2(e) are required to be construed strictly.

25. In *Konda Lakshmana Bapuji* (supra), this Court interpreting the expression land grabbing observed :

31. Clause (e) of Section 2, quoted above, defines the expression land grabbing to mean: (1) 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; (2) such grabbing must be: (i) without any lawful entitlement, and (ii) with a view to: (a) illegally taking possession of such lands; or (b) to enter into or create illegal tenancies, lease and licence agreements or any other illegal agreements in respect of such lands; or (c) to construct unauthorised structures thereon for sale or hire; or (d) to give such lands to any person on (i) rental, or (ii) lease and licence basis for construction, or (iii) use and occupation of unauthorised structures.

It was observed :

37. The various meanings noted above, disclose that the term grab has a broad meaning to take unauthorisedly, greedily or unfairly and a narrow meaning of snatching forcibly or violently or by

unscrupulous means. Having regard to the object of the Act and the various provisions employing that term we are of the view that the term grab is used in the Act in both its narrow as well as broad meanings. Thus understood, the ingredients of the expression land grabbing would comprise (i) the factum of an activity of taking possession of any land forcibly, violently, unscrupulously, unfairly or greedily without any lawful entitlement, and (ii) the mens rea/intention with the intention of/with a view to (a) illegally taking possession of such lands, or (b) enter into or create illegal tenancies, lease and licence agreements or any other illegal agreements in respect of such lands, or (c) to construct unauthorised structures thereon for sale or hire, or (d) to give such lands to any person on (i) rental, or (ii) lease and licence basis for construction, or (iii) use and occupation of unauthorised structures.

38. 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 unauthorised 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 unauthorised structures; or (ii) he has given financial aid to any person for taking illegal possession of lands or for construction of unauthorised 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 any such persons.

It was further observed :

A mere prima facie bona fide claim to the land alleged to be grabbed by such a person, cannot avert being roped in within the ambit of the expression land grabber. What is germane is lawful entitlement to and not a mere prima facie bona fide claim to the land alleged to be grabbed

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70. 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 witness like any other fact. If a person comes into occupation of any government land under the guise of a perpetual lease executed by an unauthorised 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.

26. We would consider the application of the aforementioned legal principles enumerated by this Court to the fact of the present case, a little later; but before doing so, we may notice some other decisions, which have been cited at the Bar.

27. In *Gouni Satya Reddi v. Government of Andhra Pradesh and Others* [(2004) 7 SCC 398], a two-Judge Bench of this Court held : 10. 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.

It was further held :

13. The first thing to be noted is that the case of Respondent 3 as sought to be made out in the petition as quoted in the earlier part of this judgment was that the appellant had created false documents by creating the false power of attorney in favour of Prabhakara Rao and got the sale deed registered in his favour and that the sale deed was also false. But we don't find any such finding having been recorded by the Special Court saying that the appellant had created the false document by creating the false power of attorney. In absence of any such finding it may be examined as to what extent taking over of possession by the appellant without lawful entitlement was with a view to take possession illegally. Mere fact of not being lawfully entitled to enter into possession by itself would not lead to the inference of land grabbing unless possession is illegally taken with that view in mind. It is a necessary ingredient of land grabbing i.e. the person taking possession must know it that he is acting illegally while taking possession.

It was observed :

The provisions of the Act would not cover such cases, unless coupled with the fact of not being entitled to possession the person enters into possession with a view to obtain illegal possession. Where such view of taking illegal possession is missing or lacking, a person would not be covered under the definition of the phrase or expression land grabber. The facts, to indicate such intention, though have been pleaded, as indicated earlier, but no such finding has been recorded. The mere fact of legally not entitled to the possession would not fulfil the ingredients of the definitions of land grabber and land grabbing

28. However, recently in *A.P. Housing Board v. Mohammad Sadatullah & Others* [2007 (5) SCALE 681], a Division Bench of this Court opined that the plea of adverse possession cannot be gone into in a proceeding under the said Act, stating :

41. In this connection, reference was made to a recent decision of this Court in *N. Srinivasa Rao v. Special Court under the A.P. Land Grabbing (Prohibition) Act and Ors.* (2006) 4 SCC 214. A two Judge Bench of this Court in the above case held that the Special Court constituted under the Act has no jurisdiction to decide question as to acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of Civil Court.

29. In *State of A.P. v. Smt. Pramela Modi and Others* [2006 (11) SCALE 38], a Division Bench of this Court held :

28. It is thus seen that the Special Court can play the role of a Civil Court and decide the disputed question of title and possession. The extent of jurisdiction as is permitted by the statute, therefore, is rather wide in its application. Three specific situations have been noted namely,

i) Jurisdiction can be had in regard to a case in respect of an alleged act of land grabbing

ii) Jurisdiction can be had in a case where determination of question of title and ownership are

involved and

iii) Jurisdiction can be had where lawful possession of any land grabbed under the Act is involved. All these three specific situations as envisaged by and under the Statute would be triable in the Special Court. The condition precedent for assuming jurisdiction by the Special Court is that the case must have arisen out of any alleged act of land grabbing and a District Judge while acting as a Special Court merely acts as a Presiding Officer of the Court. Having regard to the provisions of Section 8(2) read with Section 15 of the Act, no suit for title in respect of the disputed land which was alleged to be grabbed by the party could be entertained by the Civil Court. In other words, the Civil Court is barred from trying the matters which fall within the exclusive jurisdiction of the Special Court constituted under the Act.

Application of law :

30. We are bound by the decision of the larger Bench in this case. The Special Court exercises a jurisdiction of the Civil Court, provisions of the Code of Civil Procedure being applicable. If it is a Civil Court, all questions relating to title and possession can be gone into. The proceeding can be initiated in terms of Section 4 of the said Act against a person who continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment including a wakf, or any private person. If and when a proceeding is initiated under the said Act, the proceedee not only can raise a jurisdictional questions but can also raise questions relating to his title and possession. It is, therefore, difficult to comprehend as to how the Special Court would be debarred from determining the questions raised by the parties thereto. The question as to whether the land grabber had grabbed the land which is a Government land or not ordinarily is required to be determined as on the date of filing of the application.

Pendency of an application for regularization of the land, therefore, in our opinion, would not stand in the way of the State to initiate a proceeding under the Act. It is one thing to say that the question in regard to regularization of a portion of the land in question was pending before the Government in terms of the directions issued by the learned Single Judge of the Andhra Pradesh High Court, but it is another thing to say that the Special Court had no jurisdiction to continue the proceeding, which is otherwise validly initiated only because pendency of such an application. If and when the prayer of the land grabber for regularization of the land is allowed, he would become entitled thereto. We may, however, hasten to add that we are assuming that the State had the requisite jurisdiction to direct such regularization.

31. Lawful entitlement on the part of a party to possess the land being the determinative factor, it is axiomatic that so long as the land grabber would not be able to show his legal entitlement to hold the land, the jurisdiction of the Special Court cannot be held to be ousted.

32. The Act is a self-contained Code. In view of its power as also applicability of the provisions of the Civil Procedure Code, the tribunal can in a given case even entertain counter claims [See *Union of India v. Tata Teleservices (Maharashtra) Ltd.* [JT 2007 (10) SC 356].

33. The Tribunal being possessed of extensive jurisdiction, subject of course to fulfillment of the conditions precedent, for initiation of the proceeding, was entitled to go into all issues. We have

furthermore to bear in mind that the definition of land grabber is not only restricted to the party to the proceeding, but also includes his predecessor in interest. Once the land is held to be a Government land, the logical corollary thereto would be that subject to the law of limitation and prescription, the State would not lose the said right to the opposite party.

34. It may be true that absence of lawful entitlement by itself may not be sufficient to pass a judgment and decree in favour of the State and against the land grabber, but also it must be shown that he had taken illegal possession thereof.

35. The Bench in *Konda Lakshmana Bapuji* (supra) has applied both the broader and narrow meanings of the said expression. It would not, however, mean that all the tests laid down therein are required to be satisfied to their letter and spirit. What is necessary to be proved is the substance of the allegation. The proof of intention on the part of a persons being his state of mind, the ingredients of the provisions must be considered keeping in view the materials on records as also circumstances attending thereto. What would be germane for lawful entitlement to remain in possession would be that if the proceedee proves that he had bona fide claim over the land, in which event, it would be for him to establish the same.

36. In *Konda Lakshmana Bapuji* (supra), this Court has categorically held that the requisite intension can be inferred by necessary implication from the averments made in the petition, the written statement and the depositions of witnesses, like any other fact. The question which must, therefore, have to be posed and answered having regard to the claim of the land grabber would be that, if on the face of his claim it would appear that he not only had no title, but claimed his possession only on the basis thereof, the same must be held to be illegal. The question in regard to lawful entitlement of the proceedee, therefore, for invoking the charging section plays an important and significant role.

37. We would like to add that the persons purported belief that he is legally entitled to hold the land and his possession is not otherwise illegal must also be judged not only from the point of time when he entered into the possession or when he had acquired the purported title but also from the point of view as to whether by reason of determination of such a question by a competent court of law, he has been found to have no title and consequently continuance of his possession becomes illegal. If the proceedee against whom a proceeding has been initiated under the provisions of the said Act is entitled to raise the question of adverse possession, which being based on knowledge of a lawful title and declaration of the hostile title on the part of the person in possession, there does not appear to be any reason as to why knowledge of defect in his title and consequently his possession becoming unlawful to his own knowledge would not come within the purview of the term land grabbing as contained in Section 2(e) of the Act. The provisions of the Act must be construed so as to enable the tribunal to give effect thereto. It cannot be construed in a pedantic manner which if taken to its logical corollary would make the provisions wholly unworkable. Only because a person has entered into possession of a land on the basis of a purported registered sale deed, the same by itself, in our considered opinion, would not be sufficient to come to the conclusion that he had not entered over the land unauthorisedly, unfairly, or greedily.

38. For determination of such an issue, the Special Court will be entitled to take into consideration not only the rival claims of the parties, but also the earlier round of litigation, if any, and subsequent conduct of the proceedee himself.

Determination :

39. The predecessor in interest of the appellant, Ramender Reddy, was claiming the said land as if it was a grant by way of Inam. The Andhra Pradesh High Court in W.P. No. 8734 of 1983 categorically came to the finding that the land in question had vested in the State of Andhra Pradesh and Ramender Reddy was not entitled even to grant of an occupancy certificate. Ramender Reddy had, therefore, no title over the land. It was obligatory on the part of the appellant keeping in view the doctrine of caveat emptor to examine the title of the vendor over the land, it purchased. Within a period of two years from the date of purchase, the appellant became aware that it had acquired no title thereto and it had illegally been occupying the land, as the same belonged to the Government and, thus, the latter was entitled to possess the same. Apart therefrom, the appellant was put to notice that it was an encroacher. Admittedly, it had been served with a notice under the Andhra Pradesh Land Encroachment Act. The writ petition filed by it again was dismissed. Observations made therein by the learned Single Judge of the Andhra Pradesh that its application for regularization may be disposed of in the manner specified therein did not and could not have clothed the appellant with a legal entitlement thereto.

40. It is one thing to say that by reason of the direction by the High Court, its application for regularization of the land was liable to be considered but it is another thing to say that its possession thereto became lawful or otherwise it became legally entitled to possess the land. Right to possess the land must be referable to the title of the land not to mere entitlement of its application for regularization to be considered.

41. So far as the pleadings in the application under Section 8 of the Act is concerned, suffice it to say that the same was filed in a prescribed form. There does not exist any column where the requisite pleadings by way of fulfilling the second part of the ingredients of land grabbing could be pleaded. With the said application, a concise statement was annexed. The said concise statement, therefore, became a part of the application. It has categorically been stated therein that the appellant without having any right or title illegally encroached upon the Government land. The history of litigation had also been specifically stated therein, which is to the following effect :

4. It is submitted that the Respondent Company previously known as M/s Mahalaxmi Motors Pvt. Limited changed its name as Jublee Honda Motors. The land encroached by the respondent is surveyed by the Mandal Revenue Officer through Mandal Surveyor and found that the respondent not only encroached 6946 sq. mtrs. (Amended as per orders passed in I.A. No. 94 of 2003 dated 13.06.2003) of Government land in Sy. No. 82 of Bowenpally, but also encroached an extent of 842 sq. mtrs. (Amended as per orders passed in I.A. No. 94 of 2003 dated 13.06.2003) Government lands in Sy. No. 157/1 of Thokatta Village as shown in the sketch. The Respondent illegally encroached the application scheduled property and construed sheds and running Mechanical workshop for vehicles. The company constructed workshop and compound wall of an extent of 6946 Sq. Mts. (Amended as per orders passed in I.A. No. 94 of 2003 dated 13.06.2003) in Sy. No. 82/p of Bowenpally and an extent of 842 Sq. Mtrs. (Amended as per orders passed in I.A. No. 94 of 2003 dated 13.06.,2003) in Sy. No.157/1P of Thokatta Village. The application schedule land is valuable land abutting Highway and it is required for public purpose.

The cause of action arose when the Mandal Revenue Officer has issued notice on 27./4.87 to the Respondent under Andhra Pradesh Land Encroachment Act and noticed that the Respondent illegally encroached the Government land.

It is submitted that the Application Scheduled land situated abutting to the Hashamathpet Road which is a link road between two National High Ways running from Hyderabad to Karimnagar and Nizamabad, and it is very valuable property and is required for public purpose. The market value of the land is Rs. 5000/- per Sq. Mts. The Respondent wrongfully using the Government land for Commercial purpose from 1985 and the Respondent is liable to pay a sum of Rs. 20/- Sq. Mts. Per month from 1985 till the date of disposal of the LGC as means profits/compensation to the Governemnt.

42. Thus, not only the history of litigation but also area of encroachment was stated. A sketch map showing the same was annexed thereto. The fact that the appellant had made constructions illegally and had been running a workshop was specifically pleaded. One of the reliefs prayed for therein, inter alia, was to declare that the appellant was a land grabber. It is, therefore, not a case where it can be said that the respondent failed to plead the requisite ingredients of the definition of the term land grabbing.

43. We have noticed hereinbefore the findings of the learned Special Court. The Special Court took note of the aforementioned contentions of the parties hereto and arrived at a definite finding, having regard to the history of the litigation between the parties, that the appellant was a land grabber.

44. The application filed by the appellant before the State Government for regularization of the land although may not be determinative of the issue as to whether it is a land grabber or not could be taken into consideration for a limited purpose, namely, admission or acknowledgement on its part in regard to the title of the State. It was possible for the appellant to file an application for regularization of land without prejudice to its rights and contentions in the pending proceedings, but having regard to the decisions rendered by the Andhra Pradesh High Court in two writ petitions, it would be fair to presume that the appellant filed the said application knowing fully well as to where it stood. Once it had taken a specified stand knowing fully well that it had no right, title and interest in or over the land in question, it cannot in law turn round and contend that the same was not binding on it. Doctrine of estoppel in a situation of this nature, in our opinion, would squarely apply. An abstract belief on the part of the appellant that its vendor had a marketable title and it was getting a good title to the land is not decisive. Whether any action was taken by the authorities of the State in regard to the possession of Ramender Reddy or the appellant, in our opinion, is wholly irrelevant inasmuch Ramender Reddy and consequently the appellant had no title over the property nor acquired any title by prescription. Law does not contemplate any vacuum in the title. Either the State had the title or the appellant and its predecessor.

45. Submission of Mr. Dewan that it was obligatory on the part of the First Respondent to make averments that the appellant illegally, forcibly, unscrupulously or with criminal intention of grabbing the Government land entered upon the Government land, in our opinion, in the fact situation obtaining herein, was not necessary. Pleadings of the parties, it is now well- settled are not to be construed in a pedantic manner. [See Des Raj and Ors. v. Bhagat Ram (Dead) by Lrs. & Ors. [2007 (3) SCALE 371]

46. An averment that the appellant had been in unlawful possession itself is sufficient to invoke the provisions of the said Act in view of the decision of this Court in Konda Lakshmana Bapuji (supra). Keeping in view the fact that the appellant or the Ramender Reddy had no title and consequently he could not acquire any title, all other contentions raised on its behalf, in our opinion, pales into

insignificance. The fact of the matter squarely covers the ingredients of Section 2(e) of the Act as interpreted by this Court in Konda Lakshmana Bapuji (supra).

47. Submission of the learned counsel that even an order dated 03.08.2007 is not a speaking order cannot be considered in this application. However, from a perusal of the said order, it is evident that therein all relevant circumstances have been taken into consideration. Recommendations made by the Collector or the Commissioner for regularization of the land are not binding on the State.

48. We, therefore, are of the opinion that no case has been made out for interference with the impugned judgment. The appeal is dismissed with costs. Counsels fee assessed at Rs.25,000/- (Rupees twenty five thousand only).