SUPREME COURT OF INDIA

State of A.P.

Vs.

Abdul Khuddus (Dead) by LRs

C.A.No.7360 of 2000

(Tarun Chatterjee and Dalveer Bhandari JJ.)

29.11.2007

ORDER

1. This appeal is preferred against a judgment and order dated 13th of October, 1998 of the High Court of Judicature for Andhra Pradesh at Hyderabad in W.P. No. 6452 of 1995, whereby the Division Bench of the High Court had allowed the Writ Petition filed by the respondents and set aside the order dated 9th of June, 1994 passed by the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 at Hyderabad (for short "the Special Court").

2. The only question that needs to be decided in this appeal is, "Can the High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, set aside a finding of fact arrived at by the Special Court, under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short "the Act") when such finding of fact of the Special Court was made on consideration of the evidence on record and could not be said to be perverse or arbitrary.?"

3. Briefly stated, the facts leading to the filing of this appeal are that the appellant, the State of Andhra Pradesh, filed an application under the Act against the respondents in the Special Court alleging, inter alia, that the 1st respondent was in occupation of 470 sq. yards of land in Ward No. 5, Block No. 1, Vijaywada out of which 220 sq. yards situated in N.T.S. No. 26 correlated to old N.T.S. No. 17/1-A/1-A of Vijaywada town (for short the "Schedule Land") was by way of illegal encroachment. The appellant further complained that the 2nd and 3rd respondents, being the heirs and legal representatives of the original respondent No. 2, were in occupation of 540 sq. yards of land, out of which 190 sq. yards also situated in N.T.S. No. 26 correlated to old N.T.S. No. 17/1-A/1-A of Vijaywada town (for short "the schedule land") was by way of illegal encroachment. Accordingly, the State of Andhra Pradesh, the appellant, had prayed for a declaration that the respondents were land grabbers within the meaning of the Act and that the appellant was the owner of the Schedule Land.

4. The respondents, in their objection, denied that they were land grabbers in respect of the Schedule Land and pleaded that their predecessors-in-interest had perfected title of the land by way of adverse possession and alternatively, according to them, the Schedule Land belonged to Gandhi Hill Society and therefore, the question of grabbing the land of the appellant by the respondents did not arise at all. Accordingly, they pleaded that the application under the Act filed by the State of A.P. must be rejected.

5. The parties went into trial and they were permitted to adduce evidence in support of their respective cases.

6. The Special Court before which the application for land grabbing was filed by the appellant, after considering the oral and documentary evidence on record, held that the respondents were land grabbers within the meaning of the Act. The Special Court also held, on consideration of the materials on record and evidence adduced by the parties, that the respondents had failed to prove that they had perfected the title in respect of the Schedule Land by way of adverse possession. It was also held on consideration of the evidence on record that the respondents had failed to prove that the Schedule Land belonged to Gandhi Hill Society. However, the Special Court, after finding that the respondents had done construction on the Schedule Land, granted liberty to the respondents to pay the market value of the Schedule Land grabbed by them so that the title of the same could be perfected by them. Accordingly, the Special Court directed the 1st respondent to pay Rs. 4,40,000/- and the 2nd and 3rd respondents to pay Rs. 3,80,000/- by 12 monthly installments to the appellant.

7. Feeling aggrieved by the order of the Special Court, the respondents filed a Writ Petition under Article 226 of the Constitution, which was allowed, as noted herein earlier, and the order of the Special Court was set aside.

8. For proper disposal of this appeal, therefore, it would be necessary for us to consider the findings of fact arrived at by the Special Court at this stage. The Special Court had reached the following findings of fact after analyzing the evidence - oral and documentary on record: - (i) Exhibit A1 was the extract of Town Survey Land Register in respect of the land in Old T.S. No. 17/1A/1A and its classification was shown as 'poramboke'. Exhibit A2 was the extract of the Adangal in respect of the said land for Faslies of 1399-1400, in which the Schedule Land was described as 'Konda Poramboke' in Column No. 6. (ii) The name of the 1st Respondent was shown as an encroacher into an extent of 220 sq. yards in Exhibit A2. In Exhibit A3, Adangal extract, the name of 2nd Respondent was shown as an encroacher into an extent of 190 sq. yards and that Respondent Nos. 3 & 4, who were the legal representatives of the 2nd Respondent were continuing in possession of that 190 sq. yards after the death of Respondent No. 2.

(iii) Exhibit A4 was the sketch showing the extents encroached by Respondent Nos. 1, 3 & 4.

(iv) Exhibit A5 was another sketch showing the encroached extents.

(v) After considering the evidence of PW3, it was found that Exhibit A13 was a true extract of 1965 survey plan showing the extents grabbed by Respondent Nos. 1, 3 & 4, which were in N.T.S. No. 26 marked in red colour belonging to the Government.

(vi) Relying on the evidence of PW3, it was further found that the land of Gandhi Hill Society was in N.T.S. No. 52 as per the 1965 survey, which was correlated to Old N.T.S. No.15-Al Part.

(vii) Relying on the cross-examination of PW-3, it was also held that only an extent of 7 acres and odd in N.T.S. No. 52 belonged to Gandhi Hill Society and the Society had no title ever in extent of N.T.S. No. 26.

(viii) No documents were filed to prove since how long the respondent Nos. 1, 3 & 4 were in possession of the extents that were shown to have been grabbed by them. (ix) Relying on Exhibit

A12, it was also held that N.T.S. No. 52 was correlated to Old N.T.S. No. 15-A1 Part of Vijaywada and N.T.S. No. 26 was correlated to Old N.T.S. No. 17/1A-Part. Accordingly, the Special Court held that the entries in Exhibit A12 would clearly go to show that Gandhi Hill Society had nothing to do with N.T.S. No. 26 formed in pursuance of the survey in the year 1965 and, therefore, it was clearly proved from the evidence of PW1 & 2 that the Schedule Land, which was an extent of 410 sq. yards lying to the East of the sites covered by Exhibits A8 and All was in N.T.S. No. 26 belonging to the Government and not in N.T.S. No. 52 belonging to Gandhi Hill Society.

(x) An adverse inference was drawn against the respondents for non-production of the title deeds who had placed reliance only on Exhibit A-8, which was in favour of Respondent No. 1 and Exhibit A11 which was in favour of late Respondent No. 2.

(xi) The respondent No. 1 admittedly had purchased only an extent of 250 sq. yards adjoining East of 220 sq. yards shown to have been grabbed by him as per Exhibit A4 and it was also admitted by Respondent No. 3 that his mother Respondent No. 2 had purchased only an extent of 350 sq. yards under the original of Exhibit A11 and the site of an extent of 190 sq. yards shown to have been grabbed by him and Respondent No. 4 was not covered by that Sale Deed.

(xii) So far as the case of adverse possession of the respondents was concerned, it was found that the respondents had failed to prove that they had acquired title by adverse possession.

Accordingly, the Special Court, after considering the findings arrived at by it allowed the application holding that the land belonged to the State and directed the 1st respondent to pay Rs. 4,40,000/- and the 2nd and 3rd respondents to pay Rs. 3,80,000/- by 12 monthly installments to the appellant.

9. It is this order of the Special Court, which was challenged by the respondents by way of a Writ Petition. At this juncture, we may now consider as to when the High Court could interfere, with a finding of fact arrived at by the Special Court, in the exercise of its jurisdiction under Article 226 of the Constitution. It is now well settled that the High Court, in its writ jurisdiction under Article 226 of the Constitution, may interfere with the findings of fact arrived at by the Special Court only if the findings are based on no evidence or based on conjectures or surmises and if no reasonable man would on given facts and circumstances come to the conclusion reached by the Special Court. Therefore, it is pellucid that it is only in these special circumstances that it would be open to the High Court to interfere with the findings of fact arrived at by the Special Court. In Konda Lakshmana Bapuji Vs. Govt. of Andhra Pradesh and others 2002 (3) SCC 258, this court while dealing with the provisions of the Act decided the question as to when could the High Court, in the exercise of its writ jurisdiction, interfere with the findings of fact arrived at by the Special Court and observed in para 49 as under :-

"On a careful perusal of the judgment of the Special Court on the question of title of the first respondent and that of the appellant and his lessor Inamdar we are satisfied that neither was any relevant material excluded from consideration nor was any irrelevant material relied upon by the Special Court in recording its finding. There was, therefore, no scope for the High Court to interfere with those findings. In our view, the High Court committed no error of law in not interfering with the findings of the Special Court in regard to the title of the first respondent and absence of title in the appellant to the land in dispute (see : Omar Salay Mohamed Sait V. CIT)."

10. We have already discussed the findings of the Special Court and we find from the same that the findings arrived at by the Special Court cannot, by any stretch of imagination, be said to be based on no evidence or beset with surmises or conjectures and that the finding of the Special Court on the question of title of the respondents by way of adverse possession was based on consideration of the relevant evidence both oral or documentary. That apart, we also find from the order of the Special Court that neither any relevant material was excluded from consideration by it nor was any irrelevant material relied upon by it in recording its findings. At the risk of repetition, we may say that the Special Court had gone into the evidence, considered the evidence adduced by both the parties including the documentary evidence on record and came to a finding that the Schedule Land did not belong to Gandhi Hill Society and that the respondents could not prove that they had perfected title in respect of the Schedule Land by way of adverse possession. That apart, we are of the view that since it has been found on facts that the respondents could neither prove that they had acquired the title by way of adverse possession in respect of the Schedule Land nor could it be proved that the Schedule Land belonged to Gandhi Hill Society, it cannot be ruled out that the land would only belong to the State which was grabbed by the respondents. It may also be placed on record that the High Court, while reversing the findings of the Special Court could also not come to a conclusion of fact that the respondents had perfected their title in respect of the Schedule Land by adverse possession or that the Schedule Land belonged to Gandhi Hill Society. Such being the position, we are unable to sustain the order of the High Court, which had set aside the findings of fact arrived at by the Special Court, which, in our view, were arrived at on consideration of the materials on record and which, by any stretch of imagination, cannot be said to be based on no evidence or surmises or conjectures and therefore, it was not open to the High Court, in the exercise of its writ jurisdiction, to set aside the findings of fact arrived at by the Special Court which were based on sound consideration of the materials on record.

11. Accordingly, the impugned judgment of the High Court is set aside. Before parting with this order, we may keep it on record that the Special Court had taken into consideration the fact that the respondents have constructed on the Schedule Land and therefore, had directed payment of compensation so that title of the respondents in respect of the Schedule Land is perfected. That being the position, it would be open to the respondents to pay the amount as directed by the Special Court and in the event, the said amount as directed by the Special Court is paid within four months from this date, the application filed by the appellant shall be disposed of with that direction and in the event, the respondents fail to deposit the said amount, the application filed by the appellant before the Special Court shall stand allowed and it would be open to the appellant to recover the Schedule Land in accordance with law.

12. For the reasons aforesaid, the impugned judgment of the High Court is set aside and that of the Special Court is restored.

13. The Civil Appeal is accordingly disposed of with no order as to costs.