

SUPREME COURT OF INDIA

V. Laxminarasamma

Vs.

A. Yadaiah (Dead)

C.A.No.1849 of 2002

(S.B. Sinha, Asok Kumar Ganguly and R.M. Lodha J.J)

03.03.2009

JUDGMENT

S.B. SINHA, J.

Determination of a question of adverse possession whether would come within the purview of the jurisdiction of Special Tribunal and/or Special Court constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter called and referred to for the sake of brevity as 'the Act') has been referred to this Bench, noticing purported conflict in the decisions of two Division Benches of this Court in *Konda Lakshmana Bapuji v. Government of Andhra Pradesh & Ors.* [(2002) 3 SCC 258] and *N. Srinivasa Rao v. Special Court under the A.P. Land Grabbing (Prohibition) Act & Ors.* [(2006) 4 SCC 214]. Before, however, advertent to the said question, we may notice some salient features of the said Act. The Government of Andhra Pradesh noticed organized attempts on the part of certain lawless persons operating individually and in groups, to grab either by force or by deceit or otherwise, lands (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private persons) as also the fact that the land grabbers are forming bogus co-operative housing societies or setting up fictitious claims and indulging in large scale and unprecedented and fraudulent sales of lands through unscrupulous real estate dealers or otherwise in favour of certain sections of the

people resulting in large accumulation of unaccounted wealth and as thereby public order was also adversely affected now and then by such unlawful activities of land grabbers in the State in respect of urban and urbanisable land. The said Act was enacted with a view to prohibiting the activities of land grabbing in the State of Andhra Pradesh and to provide for matters connected therewith. The Act is a special Act. It is a self contained code.

'Land grabber' is defined in section 2(d) of the Act to mean a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures thereon, or who collects or attempts to collect from any occupiers of such lands, rent, compensation and other charges by criminal intimidation; or who abets the doing of any of the above mentioned acts; and also includes the successors in interest. 'Land grabbing' has been defined in Section 2(e) to mean : "every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands or enter into or create illegal tenancies or lease and licence agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such land 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 declares 'land grabbing' in any form to be unlawful and any activity connected therewith to be an offence punishable under the Act. Section 4 imposes prohibition on land grabbing, violation whereof results in penal action (s) as specified therein. Section 7 provides for constitution of Special Courts. The Chairman of the Special Court is a sitting or retired Judge of the High Court and out of other four members thereof two ought to be sitting or retired District Judges (Judicial members) and the other two who hold or have held a post not below the rank of a District Collector. The process for appointment of the Chairman and Members of the Judicial Members of the Special Court has been laid down therein. The Special Court has been empowered to make regulations relating to the procedure to be followed for the conduct of cases as also the manner of taking decisions. Sub-section (5D) of Section 7 of the Act reads as under:

"5(D)(i) Notwithstanding anything contained in the Code of Civil Procedure, 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. (ii) Notwithstanding anything contained in Section 260 or Section 262 of the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be tried in a summary way and the provisions of Sections 263 to 265 (both inclusive) of the said Code shall, as far as may be apply to such trial. (iii) When a person is convicted of an offence of land grabbing attended by criminal force or show of force or by criminal intimidation, and it appears to the Special Court that, by such force or show of force or intimidation the land of any person has been grabbed, the Special Court may if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property." Section 7A provides for the powers of the Special Tribunal, sub- section (1) whereof reads as under : "B7-A.

"Special Tribunals and its powers etc:-- (1) Every Special Tribunal shall have power to try all cases not taken cognizance of by the Special court relating to 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 the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987 and brought before it and pass such orders (including orders by way of interim directions) as it deems fit. Provided that if, in the opinion of the Special Tribunal, any case brought before it is prima facie frivolous or vexatious, it shall reject the same without any further enquiry; Provided further that if in the opinion of the Special Tribunal any case brought before it is a fit case to be tried by the Special court it may for reasons to be recorded by it transfer the case to the Special Court for its decision in the matter." The first proviso appended thereto empowers the Special Court to reject a case brought before it without any further enquiry, if prima facie it appears to be frivolous or vexatious. Special tribunal may also for reasons to be recorded by it transfer a case to the special court for its decision in the matter. A special tribunal ordinarily is required to follow the procedures prescribed in the Code of Civil Procedure. An appeal is maintainable from a judgment or order to the special court. Sub-section (4) of Section 7A makes a finding of the Special Tribunal with regard to any alleged act of land grabbing to be conclusive of the said fact as also the persons who committed the act of land grabbing conclusive. Section 8 provides for the procedure and power of the Special Courts, the relevant parts whereof read as under:

"8. Procedure and Powers of the Special Court: --(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. XXX XXX XXX (2B) Notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act. (Central Act 2 of 1974). (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. Provided that the Special Court shall by notification specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Court from any person including the custodian of evacuee property within the period specified therein will be considered by it. Provided further that where the custodian of evacuee property objects to the Special court taking cognizance of the case, the Special Court shall not proceed further with the case in regard to such property; Provided also that the Special Court shall cause a notice of taking cognizance of the case under the Act, served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land.

(7) It shall be lawful for the Special Court to pass such order as it may deem fit to advance the cause of justice. It may award compensation in terms of money for wrongful possession of the land grabbed which shall not be less than an amount equivalent to the market value of the land grabbed as on the date of the order and profits accrued from the land, payable by the land grabber to the owner of the grabbed land and may direct re-delivery of the grabbed land to its rightful owner. The

amount of compensation and profits, so awarded and costs of re-delivery, if any, shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a Civil Court, in any other case to be executed by the Special Court. Provided that the Special Court shall, before passing an order under this sub-section, give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard and consider such representation and evidence. (8) Any case, pending before any court or other authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special court as if the cause of action on which such suit or proceeding is based had arisen after the constitution of the special court." Section 9, inter alia, provides that the provisions of the Code of Civil Procedure and the Code of Criminal Procedure shall apply to the proceedings before the Special Court insofar as they are not inconsistent with the provisions of the Act and for the purposes thereof the Special Court shall be deemed to be a 'Civil Court' or as the case may be a 'Court of Sessions' and shall have all the powers of a Civil Court or the Court of Sessions. Section 10 provides for the burden of proof. Section 15 of the Act contains a non-obstante clause stating that the provisions thereof shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a court of any other tribunal or authority. Rule making power is vested in the State in Section 16 of the Act. Section 17A provides for review of the judgment and order passed by the special court under Section 8. Section 17B provides for guidelines for interpretation of the Act as contained in Schedule appended thereto. The Government of Andhra Pradesh made rules in exercise of its power conferred by sub-section (1) of Section 16 of the Act known as the Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 (for short "the Rules"). Rule 5 lays down the procedure for suo motu action. Rule 6 provides for verification of application. Rule 7 mandates that the Special Court before taking cognizance of the case is to give notice in form 2A by publishing it in the Andhra Pradesh Gazette. Sub-section (2) thereof makes a similar provision in relation to the Special Tribunal. Rules furthermore provide for notice to the person interested as also notice to the land grabbers. It provides for filing of a counter affidavit. Rule 10 provides for the application of the Code of Civil Procedure in the matters as provided for therein. Rule 15 lays down the procedure for taking possession. The Special Court has also framed regulations in exercise of its power conferred upon it under sub-section (5A) of Section of the Act, inter alia, providing for :

1. Place of sitting of the Special Courts (Regulation 4)

2. Sitting hours of the Special Court (Regulation 5)

3. Working hours of the office of the Special Court (Regulation 6)

4. Scrutiny of the application (Regulation 8) 5. Weekly and daily cause list (Regulation (11) 6. Documents to accompany summons to the respondent (Regulation 12) Chapter III of the Regulations provide for the powers and functions of the officers of the Court. The Regulations furthermore provide for the matters relating to proceedings before the Special Court, inspection of

documents by strangers, inspection of the records, production of records in the custody of a court, production of records in the custody of public officer other than a court, etc. The Act indisputably confers a wide jurisdiction upon the Special Court and the Special Tribunal. The Tribunal or the Special Courts are high powered ones. For all intent and purport, the Tribunal and Special Courts are substitutes for the civil court and the appellate authority. Statements of objects and reasons for enacting the said Act clearly establish that the said Act was enacted to achieve a special purpose; the 'object' being to prohibit land grabbing resulting in breakage of public law and order. The Act brings within its umbrage not only 'grabbing of lands' of Government or local authorities but also statutory authorities and private persons. It aims at those persons who form a distinct class. The Special Courts have both civil and criminal jurisdiction. The provisions of Code of Civil Procedure and Code of Criminal are ordinarily applicable subject, of course, to the provisions to the contrary. It also safeguards the interest of the noticees from vexatious or frivolous litigations. Before taking cognizance of a case, a report of the revenue authorities are required to be obtained. In the event a suo motu action is to be taken, the proceeds are required to be heard. A legal fiction is created that it would be civil court and/or court of sessions and would otherwise have the same power as civil court or the court of sessions as provided for in the Code of Civil procedure and Code of Criminal Procedure, the Act provides for transfer of cases to the Tribunals in relation to the matters pending before any court of law relating to land grabbing. The Act also contains a non-obstante clause. The Special Courts and Tribunals, indisputably are entitled to determine any question or issue including the question of title or possession in the proceedings initiated before it. Special Courts and the Tribunal not only have trappings of a court but also of a civil court and, thus, are entitled to determine complicated questions of title. Would the question of adverse possession be beyond the purview of its jurisdiction is the question. There appears to be an apparent conflict in the decision in Konda Lakshmana Bapuji (supra) and N. Srinivasa Rao (supra). Whereas in the former, the defence of adverse possession had specifically been gone into holding that the appellant therein had acquired indefeasible title by adverse possession, opining:

"17. It is pertinent to note that mere allegation of an act of land grabbing is sufficient to invoke the jurisdiction of the Special Court. In both Section 7 (1) and Section 8(1) of the Act the phrase "any alleged act of land grabbing" is employed and not "act of land grabbing". It appears to us that it is designedly done by the legislature to obviate the difficulty of duplication of trial once in the courts under the Act and over again in the ordinary civil court. The purpose of the Act is to identify cases involving allegation of land grabbing for speedy enquiry and trial. The courts under the Act are nonetheless civil courts which follow the Code of Civil Procedure and are competent to grant the same reliefs which can be obtained from ordinary civil courts."

It was furthermore observed:

"A combined reading of these provisions leads to the conclusion that the jurisdiction of the civil court under Section 9 of the Code of Civil Procedure and under the Civil Courts Act is ousted and the Act which is special law will prevail and as such the Special Court will have jurisdiction in respect of the matters dealt with thereunder. (See: Sanwamal Kejriwal v. Vishwa Coop. Housing Society Ltd.)" In N. Srinivas Rao (supra), another Division Bench, however, unfortunately, without

noticing Konda Lakshamana Bapuji (supra), despite holding that there was no actual dispossession, opined :

"...In our view, in a proceeding before the Special Court the only issue which fell for decision is whether there has been an act of land grabbing as alleged and who is the guilty party. The Special Court has no jurisdiction to decide questions relating to acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of the civil courts. The learned Special Judge apparently travelled beyond the jurisdiction vested in him under the 1982 Act in deciding that even if the provisions of Section 47 of the Act were a bar to transfer without the sanction of the Tahsildar, the occupants of the land had perfected their title thereto by way of adverse possession." We may, however, notice that another Bench of this Court in *A.P. Housing Board v. Mohd. Sadatullah & Ors.* [(2007) 6 SCC 566] despite noticing both the decisions did not enter into the larger question and in the peculiar facts and attending circumstances thought it appropriate that the finding as to adverse possession be set aside by granting liberty to all or any of the respondents to take appropriate proceedings by approaching a competent civil court, if they claim title on the basis of adverse possession. Mr. M.N. Rao, learned senior counsel appearing on behalf of the appellant, would submit that the Tribunal being not a Court and as the protections afforded to a defendant in a civil suit have been taken away by reason of the provisions of the said Act, they require strict construction. Jurisdiction of the Civil Court having been expressly ousted and in any event, the Tribunal and/or special court being not an alternative efficacious complicated question in regard to adverse possession, it was urged, must be held to be beyond the purview of the Tribunal. Mr. Anoop G. Chaudhary, learned senior counsel appearing on behalf of the respondent, on the other hand, would contend that the said Act being a special law having been enacted to deal with special circumstances and providing for a high powered tribunal, it must be held to have the jurisdiction to deal with a question of adverse possession. Acquisition of an indefeasible title by adverse possession, the learned counsel would submit, also being a question of title, there is absolutely no reason as to why special court and/or tribunal can be said to be having no jurisdiction in relation thereto. The validity of the Act is not in question. We have, therefore, no other option but to proceed on the basis that the same is constitutional. In view of the question referred to before us, we are also not called upon to decide the larger question as to whether by reason of the provisions of the Act, the jurisdiction of the Civil Court has been ousted. We have noticed the provisions of the Act. The Act provides for inbuilt safeguards for the defendants.

The Special Court or the Tribunal derives jurisdiction of a case only in the event it is satisfied with regard to the existence of the jurisdictional facts viz. activities of land grabbing. Notices are issued by the Tribunal only on arriving at a prima facie satisfaction. Hearing of the noticee is mandatory in the event a suo motu action under the Act is to be taken. A report of the revenue officer who is man on the spot is required to be obtained. Rules and Regulations framed under the Act provide for a detailed procedure. The Tribunal or the Special Court, thus, cannot act in an arbitrary or capricious fashion. The provisions of the Act provide for adequate remedy in case an application is found to be vexatious or frivolous although it exercises a very wide jurisdiction both under Civil as also Criminal law. The Tribunal is a high powered one. It can execute its own decrees. The provisions of the Act, as noticed hereinbefore, contain non- obstante clause in terms whereof the provisions thereof prevail over not only Code of Civil Procedure but also A.P. Civil Court's Act. 'Civil Court' is defined under the A.P. Civil Courts Act. Tribunals and/or Special Courts by reason

of a legal fiction created are both Civil Court as also the Court of Sessions. Legal fiction created under the Act is of wide amplitude. [See *Collector of Bombay v. Municipal Corporation of the City of Bombay* [AIR 1951 SC 469]; and *Mahabir Vegetable Oils Pvt. Ltd. and Anr. v. State of Haryana and Ors.*, (2006) 3 SCC 620]. The Tribunal and/or Special Court are ordinarily required to follow the provisions of the Code of Civil Procedure and Code of Criminal Procedure. Being a 'court', the provisions of the Indian Evidence Act would also be applicable. It is true that burden of proof is on the noticee being an alleged land grabber, but the same by itself would not mean that it is an interim Tribunal vis-à-vis the civil court. Enactment of such a provision, moreover, was within the competence of the Legislature.

Only because burden of proof is on the noticee, the same would not mean that he has been deprived of his right to defend himself in the proceedings. Burden of proof is in the realm of procedural law. By reason of such a provision, substantive right of the parties on an immovable property is not taken away. Jurisdiction is exercised by the Tribunal and/or Special Court upon arriving at a satisfaction in regard to existence of jurisdictional fact. Even in terms of Article 65 of the Schedule appended to the Limitation Act, 1963 in the event, the plaintiff proves his title, the burden of proof would be on the defendant to show that he has acquired title by adverse possession. {See *Annakili v. A. Vedanayagam and Ors.* [(2007) 14 SCC 308]. The defendant in all circumstances, therefore, would be entitled to prove that he is lawfully entitled to possess the land. No law says that if a new forum is created by a special statute in terms whereof the jurisdiction of the civil court becomes barred, the Tribunal constituted thereunder must be a substitute for a civil court, not only with regard to all its powers but also with all its deficiencies. If the Special Act satisfies substantive due process, in our opinion, the same would satisfy the legal requirements. Acquisition of an indefeasible title by prescription is a creation of statute. Section 27 of the Limitation Act provides for extinction of a title of the owner of the land and vesting thereof in a person who has acquired the same by adverse possession. The plea of adverse possession, however, must expressly be raised and established. The question referred to before us has been gone into by a Bench of this Court in *Mahalaxmi Motors Ltd. v. Mandal Revenue Officer and Ors.* [(2007) 11 SCC 714], wherein this Court took into consideration the earlier decisions of this Court including *Konda Lakshmana Bapuji* (supra) and *N. Srinivasa Rao* (supra) and *Mohd. Sadatullah* (supra) as also *State of A.P. v. Prameela Modi* [(2006) 13 SCC 147]. In *Mahalaxmi Motors* (supra), it was held:

"36. We are bound by the decision of the larger Bench in this case (sic for coordinate bench). 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 proceegee not only can raise 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." It was opined :

"40. The Tribunal being possessed of extensive jurisdiction, subject of course to fulfilment 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.

41. 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.

42. The Bench in *Konda Lakshmana Bapuji* 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 in 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 person 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 proceegee proves that he had bona fide claim over the land, in which event, it would be for him to establish the same.

43. In *Konda Lakshmana Bapuji* this Court has categorically held that the requisite intention 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 proceegee, therefore, for invoking the charging section plays an important and significant role.

44. We would like to add that the person's 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 proceegee 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.

45. 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 proceeedee himself." We agree with the legal principles laid down in the said decision and are of the considered view that the Tribunal/Special Court constituted under the Act has the requisite jurisdiction to go into the question of adverse possession. We are not oblivious of a decision of this Court in *Government of Andhra Pradesh v. Thummala Krishna Rao and Anr.* [(1982) 2 SCC 134] wherein it was held that a question of title could not properly be decided in a summary enquiry contemplated by Sections 6 and 7 of the A.P. Land Encroachment Act, 1905. In that case, the principal question, which arose for consideration, was as to whether the property in question was in possession of the family of one Habibuddin for a long time and, thus, the same had not vested in the Government by reason of a land acquisition proceeding initiated for acquisition of the land for Osmania University. In that case, Osmania University filed a suit for possession which was dismissed on the premise that Habibuddin had perfected his title by adverse possession. Thereafter Osmania University requested the Government of Andhra Pradesh to take steps for summary eviction of the persons who are not in authorized occupation of the said plots. The observations made therein must be held to have been made in the aforementioned factual matrix. It is one thing to say that a summary proceeding cannot be resorted to when a noticee resists a bona fide dispute involving complicated questions of title and his right to remain in possession of the land but it is another thing to say that although a Special Court and/or a Tribunal which has all the powers of a civil court would not be entitled to enter into such a contention. Krishna Rao (supra), therefore, in our opinion has no application to the facts of the present case. We, therefore, are of the opinion that Konda Lakshmana Bapuji (supra) lays down the correct law and N. Srinivasa Rao (supra) does not. The reference is answered accordingly. The merit of the matter may now be determined by an appropriate Bench.