

HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.12263 of 2015

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ORDER : (Per Justice R. Subhash Reddy)

This writ petition is filed by the applicants in L.G.C. (SR).No.4879 of 2013, aggrieved of the order dated 10.02.2015, passed by the Special Court under A.P. Land Grabbing (Prohibition) Act, 1982, seeking the following reliefs:

- “(a) to call for the records in LGC.Sr.No.4879/2013 on the file of the Honourable Special Court under A.P.Land Grabbing (Prohibition) Act, at B.R.K.R.Bhavan, Hyderabad, and other connected records from the Respondent no.1;
- b. to quash and set aside the impugned Judgement and order dt:10-02-2015 in LGC.Sr.No.4879/2013 on the file of the Honourable Special Court under A.P.Land Grabbing (Prohibition) Act, at B.R.K.R.Bhavan, Hyderabad, by declaring it as illegal and unconstitutional;
- c. to direct the Honourable Special Court under A.P.Land Grabbing (Prohibition) Act, at B.R.K.R.Bhavan, Tank bund, Hyderabad, to forthwith number and take on file the LGC.Sr.No.4879/2013 filed by the Petitioners as per law;
- d. and to pass such other order or orders which the Honourable court may deem fit and proper in the circumstances of the case.”

2. The petitioners herein have filed application under Section 8(1) of the A.P.Land Grabbing (Prohibition) Act, 1982, to declare the respondent-authorities as land grabbers of the land admeasuring Ac.1.08 gts. in Sy.No.33/1, situated at Gudimalkapur village. The

father of the 1st petitioner and others have earlier filed suit in O.S.No.1450 of 1984 before the IV Additional Judge, City Civil Court, Hyderabad, for declaration of title and recovery of possession of the very same application schedule property and the same ended in dismissal. As against the same, matter was carried in appeal to this Court in CCCA.No.106 of 1988. The said appeal was allowed and the matter was remanded back to the trial Court by judgment and decree dated 18.01.2000. On remand, suit filed by the plaintiffs is decreed by judgment and decree dated 08.03.2001 and questioning such judgment and decree, respondents herein have carried the matter in appeal, in CCCA.No.107 of 2001. The said appeal is allowed and consequently, the suit filed by the plaintiff-applicants is dismissed and the said judgment of this Court has become final.

3. In view of dismissal of the suit with regard to the application schedule property in view of the judgment of this Court, without numbering the appeal, matter was called on the Bench at S.R. stage and the Special Court, by order dated 10.02.2015, dismissed the LGC at S.R. stage by recording a finding that the application filed is frivolous and the litigation initiated by the petitioners is vexatious and the same deserves to be dismissed without any further inquiry.

4. In this writ petition, it is contended by the learned counsel for petitioners that in view of various allegations made by the petitioners, the Special Court committed error in dismissing the petition at S.R. stage without even numbering it. It is contended that the suit filed before the IV Additional Judge, City Civil Court, Hyderabad in O.S.No.1450 of 1984 came to be dismissed in view of the judgment of this Court in CCCA.No.107 of 2001, for non-filing of certain material documents such as judgment dated 22nd Ardhibehisth 1352 Fasli, passed in Case No.85 between the Defence Secretariat and Shamsheer Nawaz Jung. It is submitted that in the said judgment, it is clearly held that the land belonged to Shamsheer Nawaz Jung,

through whom the applicants are claiming title and if the land is required for Defence purpose, it can be acquired only after completing the procedural formalities under the provisions of the Land Acquisition Act. It is submitted that non-filing of such documents is a fraud played by the respondents and the learned counsel, in support of his contention, has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **S.P.Chengalvaraya Naidu vs. Jagannath & others.**

5. Having heard learned counsel for petitioners, we have perused the order of the Special Court and other material on record.

6. In this case, the applicants are claiming as heirs of Sultan Hussain, who originally filed suit in O.S.No.1450 of 1984 with regard to very same property for declaration of title and recovery of possession. Originally, the suit was dismissed, but after remand, it was allowed, but on appeal filed by the respondents herein, said appeal is allowed resulting in dismissal of the suit filed by the applicants. When title itself is negatived in the civil proceedings by this Court in view of allowing of CCCA.No.107 of 2001, it is not open for the petitioners to still claim title to the property and plead that the respondents are land grabbers. Non-filing of a particular document at relevant point of time is no ground to ignore the earlier judgments which have become final. Being the plaintiffs, it is the duty of petitioners herein to prove their case by leading cogent evidence and when this Court has delivered judgment as early as on 21.11.2006 and when the same has become final, it is not open for the petitioners to seek declaration that the respondents herein are land grabbers, presuming that the applicants hold title. When the title of petitioners is already negatived by this Court, it is no more open for them to claim title to the property so as to seek declaration that the respondents are land grabbers. In the judgment in **S.P.Chengalvaraya Naidu's** case (supra), the Hon'ble Supreme Court has held that obtaining of preliminary decree

in a partition suit by non-mentioning the release deed tantamount to playing fraud. But, there cannot be any hard and fast rule to decide whether in a particular case, the party has played fraud or not and such aspect will depend upon facts of each case. Merely because one document, which supports the case of plaintiffs, is not projected by the respondents, that by itself, cannot be the ground to hold that respondents have played fraud. If the petitioners want to rely on a particular document, the burden lies on them to prove their case by producing such document, but by not filing the document and only on the ground that the respondents have not filed such document, it is not open for the petitioners to plead that the respondents have played fraud. Therefore, we are of the view that having regard to the fact situation in the present case, the ratio laid down in the aforesaid judgment would not support the case of petitioners. When title and possession is negated by the civil Court, the petitioners cannot maintain any petition under the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982, to declare that the respondents herein are land grabbers. It is also to be noticed that respondents are none other than the Defence Secretary of Government of India, Andhra Sub-Area Commander and the Defence Estate Officer. In view of finality of the judgment in civil proceedings, the Special Court has rightly held that the claim made by the petitioners in the L.G.C. (SR) is a frivolous and vexatious one and has rightly rejected the same. Therefore, it would not warrant any further inquiry by this Court.

7. For the aforesaid reasons, this writ petition is devoid of merit and it is accordingly dismissed at the stage of admission. No costs.

Miscellaneous applications pending, if any, shall stand closed.

R. SUBHASH REDDY, J

A.SHANKAR NARAYANA, J

8th June 2015

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