

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION NO.26492 OF 2016

DATED:21-09-2016

Between:

Dr. K.L. Narayana

... Petitioner

And

The Special Tribunal under

A.P. Land Grabbing Prohibition Act, 1982-cum-

Chief Judge, City Civil Courts

Hyderabad

and others

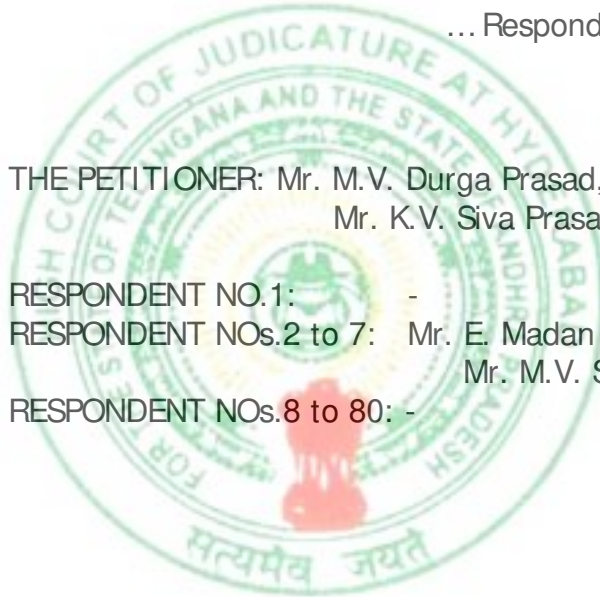
... Respondents

COUNSEL FOR THE PETITIONER: Mr. M.V. Durga Prasad, for
Mr. K.V. Siva Prasad

COUNSEL FOR RESPONDENT NO.1: -

COUNSEL FOR RESPONDENT NOS.2 to 7: Mr. E. Madan Mohan Rao, for
Mr. M.V. Suresh

COUNSEL FOR RESPONDENT NOS.8 to 80: -



THE COURT MADE THE FOLLOWING:

JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

Respondent No.56 in L.G.O.P. No.1126 of 2014 on the file of the Chief Judge, City Civil Court, Hyderabad, moved this Court by way of the present writ petition for issue of a writ of certiorari for quashing order dt.15.7.2016 in I.A. No.5254 of 2014 filed in the said L.G.O.P.

2. The huge litigious background condensed to suit the adjudication of the present writ petition is summarized hereunder. Respondent Nos.2 to 7 are the sons of late Syed Mohiuddin, through his second wife. Respondent Nos.73 to 80 are also the sons of Syed Mohiuddin through his first wife. It is the pleaded case of respondent Nos.2 to 7, who instituted the L.G.O.P. that their father executed a gift deed dt.31.12.1965 for an extent of Acs.12.00 in favour of respondent Nos.73 to 80 and that by another gift deed dt.16.3.1966 he has cancelled the earlier gift deed and bequeathed the said property in favour of respondent Nos.2 to 7. It is their further case that by virtue of the said memorandum of gift deed they have become the absolute owners and possessors of the said property. They further pleaded that the petitioner herein and some amongst respondent Nos.8 to 72 started litigating among themselves over Ac.9.20 guntas and that they have filed a collusive suit in O.S. No.364 of 1990 on the file of the V Senior Civil Judge, City Civil Court, Hyderabad, for permanent injunction without impleading respondent Nos.2 to 7. That during the pendency of the suit, the legal heirs of late Sugra Begum and late Madan Lal Gupta were brought on record and that the said suit was dismissed on 27.01.2004. That aggrieved by the said judgment, a collusive appeal in A.S. No.15 of 2005 was filed, that the said appeal was referred to Lok Adalat and that an Award was passed on 26.02.2005, dividing the extent of Ac.9.20 guntas between the legal heirs of Madan Lal

Gupta (Acs.5.00) and that of Sugra Begum (Ac.4.20 guntas). That on the basis of the Award passed by the Lok Adalat, declarations were filed before the Urban Land Ceiling (ULC) Authorities by the said two branches and some of them obtained exemption from the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the ULC Act') vide G.O. Ms. No.533, dt.25.4.2005 as per G.O. Ms. No.456, dt.29.7.2002. That respondent Nos.73 to 80 filed W.P. No.29104 of 2009 questioning the said exemption and secured interim order dt.31.12.2009 and respondent Nos.2 to 7 filed W.P. No.16899 of 2014 seeking suspension of G.O. Ms. No.533, dt.25.4.2004 and that the same is pending.

3. Respondent Nos.2 to 7 further pleaded that the contesting respondents in the L.G.O.P. are claiming title based on a sale deed dt.22.11.1344 Fasli, which is not referable to the land in question, and that the same pertains to Plot No.24 in Sy. No.129 admeasuring 2000 acres situated at Jubilee Hills, Hyderabad, but not to the land bearing Sy. No.391 (old), T.S. No.4P and 6P. They further pleaded that on 01.11.2012 at about 11.00 a.m., the contesting respondents in the L.G.O.P. caused interference with the possession of respondent Nos.2 to 7 over the property, kidnapped the Security Guard by name Kamlesh and that the purported family members of respondent Nos.2 to 7 (i.e., respondent Nos.73 to 80) filed W.P. No.36606 of 2012 questioning the inaction of the Police and also filed a writ of habeas corpus in connection with the kidnapping of Watchman, besides filing a private complaint based on which Crime No.1161 of 2012 was registered on 11.12.2012. That as no action was taken, and as illegal constructions were sought to be raised, the said respondents have filed W.P. No.39150 of 2012 for stopping the illegal constructions. That in spite of an interim order granted by this

Court, the constructions were being carried on unabated forcing respondent Nos.73 to 80 to file C.C. No.45 of 2013. That respondent Nos.2 to 7 filed W.P. Nos.18409 and 20011 of 2014 which are pending. They have further alleged that with the help of respondent Nos.8 to 62 and 64 to 80, the petitioner herein and respondent No.63 are taking up illegal construction in the schedule property and that on 5.5.2014 they came to the property with force demanding respondent Nos.2 to 7 to handover possession of the property upon which the said respondents have filed a complaint to the Commissioner of Police on 5.5.2014 as well as to the Station House Officer, Banjara Hills on the same day, but due to the influence of the petitioner and respondent No.63, the Police have not interfered in the matter. It was further alleged that when the L.G.O.P. was filed in the Month of May, 2014, the contesting respondents have avoided to receive the notice and therefore respondent Nos.2 to 7 have filed I.A. No.4846 of 2014 against the petitioner, who is proceeding with the construction activity, that as the said I.A. was not disposed of, respondent Nos.2 to 7 have filed C.R.P. Nos.3533, 3534, and 3684 of 2014, and that the said civil revision petitions were disposed of on 10.10.2014 directing the lower Court to dispose of the I.As in a time bound manner, and that as the petitioner was continuing to undertake construction activity, and making hectic efforts to alienate the same and also create charge by way of mortgage in favour of various banks for raising finances for the project, an injunction was sought against the petitioner restraining him from alienating the property in favour of third parties and creating a charge over the same.

4. The petitioner has contested the said I.A. by filing a detailed counter affidavit. It is *inter alia* pleaded that respondent Nos.2 to 7 have

no *locus standi* to file the L.G.O.P. and the I.A. for injunction, that M/s. Trendset Builders Private Limited, Hyderabad, has undertaken the development activity in the land admeasuring 16600 square yards, which is the petition schedule property situated in Sy. No.391 (old) and Sy. Nos.219 and 220 (new), Ward – 10, Road No.5, Banjara Hills, Hyderabad, in terms of the Registered Development Agreement – cum- General Power of Attorney, dt.29.7.2010 executed by respondent Nos.8 to 15 along with respondent Nos.22, 56, 58, 59 and 65 to 72 and that seeking injunction over the entire extent of Acs.12.00 in the said survey number is not sustainable in law. It was further pleaded that the pahanies filed by respondent Nos.2 to 7 do not support their plea of possession, as neither themselves, nor the alleged donor have been shown as occupants of the schedule property, as they were never in possession of the same. That most of the petition schedule property was covered by either permanent or other structures, constructed over a period of 40 years and more, that respondent Nos.2 to 7 never made any claim in respect of any of the structures and that therefore they must be deemed to have acquiesced in the said constructions. That the petitioner has obtained various permissions and clearances from the authorities concerned appointed under various enactments and that all those permissions and clearances were granted by the authorities after thorough enquiry and inspection. That the petitioner has obtained no objection certificate from the Collector, Hyderabad District, confirming that the Government does not have any claim over the subject land, vide Proceedings No.11/9243/2008, dt.23.11.2008. That the petitioner has also got change of land use permission from the Hyderabad Metropolitan Development Authority, from Recreational Zone to Residential Zone, vide G.O. Ms. No.211,

dt.13.6.2011. That he has also obtained permission from the Greater Hyderabad Municipal Corporation (GHMC), Hyderabad, vide permit No.2319/HO/CZ/Gir-10/2013, dt.22.5.2013, besides obtaining 'consent for establishment' for construction of residential apartments from the Andhra Pradesh Pollution Control Board, Hyderabad, and excavation permission from the Mines and Geology Department, Hyderabad. That after obtaining all the afore-mentioned permissions and clearances, the petitioner has commenced construction activity in the subject land and entered into several agreements with the purchasers of the flats, suppliers of materials and for various other services relating to construction of apartment complex and that grant of an injunction order of any nature would directly affect the rights of the petitioner and others.

5. The petitioner further pleaded that respondent Nos.73 to 80 (the children of Syed Mohiuddin through his first wife) have earlier indulged in a similar type of litigation, that in order to avoid delay and execution of the project, the petitioner entered into a compromise agreement with them by paying huge amounts as compensation and thereafter respondent Nos.2 to 7 (the children of Syed Mohiuddin through his second wife) have started litigation and that the application filed seeking injunction does not disclose any act of land grabbing. The petitioner has given the following brief history tracing his title over a part of the property.

6. Originally the land to an extent of Ac.11.20 guntas in Sy. No.391 (old), and Sy. Nos.219 and 220 (new) in T.S. Nos.2P, 4, 5P, 6 and 19 in Ward No.11, Block E, Old Road No.5, New Road No.7 of Banjara Hills, Hyderabad, belonged to one Mohd. Mehdi, S/o. Khaja Moinuddin Saheb. That the said Mohd. Mehdi sold a part of the land to an extent of Acs.5.00

guntas in favour of Mohd. Hasan, husband of Smt. Sugra Begum, under a registered sale deed No.636916, dt.29th Farwadi 1340 Fasli and delivered the physical possession thereof to the purchaser. Further, he has also sold an extent of Ac.4.20 guntas along with rooms constructed thereon in favour of Mirza Mohammed Kasim, the father of Surgra Begum under the agreement of sale deed dated 4th Mehar, 1346 Fasli. The said Mirza Mohammed Kasim died intestate, leaving behind him Smt. Sugra Begum and Ms. Meharunnisa Begum as successors to his estate and subsequently Meharunnisa Begum orally gifted her share in the land admeasuring Ac.2.10 guntas in favour of her elder sister, Sugra Begum and delivered the physical possession of the land. While things stood thus, Meharunnisa Begum died without being married. As a result thereof, Smt. Sugra Begum succeeded to the entire property of Ac.4.20 guntas. Accordingly, Smt. Sugra Begum has become absolute owner and possessor of the total extent of Ac.9.20 guntas.

7. That while Smt. Sugra Begum was holding title over the property, the persons by names, late Manik Lal Gupta and late Madan Lal Gupta also claimed rights over the part of the property leading to the institution of a series of cases. That the mother of respondent Nos.8 to 15 entered into an agreement of sale dt.20.3.2016 with M/s.Sumanjali Projects Private Limited, agreeing to sell their land to an extent of Acs.4.20 guntas obtained by them under the compromise decree, besides executing a Registered General Power of Attorney of their nominee agreement holder (respondent No.63) vide Registered GPA bearing No.1172 of 2006, dt.27.3.2006, empowering him to deal with their share of the land (an extent of Ac.4.20 guntas). That subsequently, respondent No.63, in exercise of his powers conferred on him under the said GPA entered into a

memorandum of understanding dt.01.3.2007 with M/s. Blue Streak Project Developers Private Limited, Hyderabad, wherein respondent Nos.8 to 15 have assigned their rights and obligations in favour of the petitioner under a Deed of Assignment dt.18.1.2008. That afterwards, a *de novo* memorandum of understanding dt.20.4.2008 was executed between the petitioner and respondent Nos.8 to 15 through their GPA holder and the latter have agreed to give their share of land to an extent of Ac.4.20 guntas. That at the intervention of the well-wishers, respondent Nos.8 to 15 on one side and respondent Nos.22, 56, 58, 59 and 66 to 72 on the other side entered into a compromise agreement on 24.6.2009 and accordingly they have executed a Registered Development Agreement—cum-General Power of Attorney, bearing document No.3589 of 2010, dt.29.7.2010 in favour of the petitioner and thus he is in possession of the subject land and making construction of the multi-storied complex.

8. The petitioner further averred that respondent Nos.2 to 7 are strangers to subject land, that they have neither title nor possession over the property, that the petitioner has incurred a lot of expenditure for levelling and protecting the site for the last three years and also paid Rs.10.00 crores to respondent Nos.8 to 15 represented by respondent No.16 towards refundable security deposit, that he paid Rs.1.76 crores towards building permit fee to the GHMC for obtaining building sanctions and incurred more than Rs.10.00 crores towards making payment to the contractors, architects, engineers and other material suppliers as advance and has also been incurring Rs.1.00 crore per month towards the construction cost for the development of the project for the last two years, that in view of the same *prima facie* case, balance of connivance and irreparable injury heavily lie towards the petitioner and against

respondent Nos.2 to 7 and that as such the latter are not entitled to seek the relief of injunction against the petitioner.

9. Having regard to the rival pleadings of the parties, the Special Court has framed the following point for determination.

“Whether the petitioners have prima facie right and title and balance of convenience is in their favour and that they are entitled to temporary injunction restraining the 56th respondent, his agents etc., from alienating the petition schedule property in favour of third parties during pendency of the main L.G.O.P. No.1126 of 2014?”

On behalf of respondent Nos.2 to 7, Exs.P.1 to P.60 were marked. The petitioner has got marked Exs.R.1 to R.46. No oral evidence was let in by the parties.

10. On purported appreciation of the documentary evidence, the lower Court has restrained the petitioner or any person claiming through him from making further constructions and entering into fresh agreements of sale for alienation of the petition schedule property in favour of third parties, creating charge on the property by way of mortgage in favour of various banks against project finance and home loans etc., by way of interim injunction. The Court further directed both parties to maintain *status quo* in order to protect the property and rights of the parties. Feeling aggrieved by this order, respondent No.56 in the I.A. and the L.G.O.P. filed this writ petition.

11. Mr. M.V. Durga Prasad, learned counsel appearing for the petitioner, advanced the following submissions.

(i) That the Special Court has committed a serious jurisdictional error in granting injunction not only against alienation and creation of third party rights over the property, but also against the construction, though the relief claimed in I.A. No.5254 of 2014 was confined only to alienation and creation of third party rights; (ii) that except Ex.P.59, alleged gift deed executed by Syed Mohiuddin, respondent Nos.2 to 7

have not produced any shred of documentary evidence establishing their right, title and possession over the petition schedule property; (iii) that respondent Nos.2 to 7, who represent one branch of Syed Mohiuddin, never asserted their purported right over the petition schedule property till the year 2014 when respondent Nos.73 to 80, representing the other branch of Syed Mohiuddin, who were indulging in litigation over the petition schedule property, settled the dispute with the petitioner and other claimants of the property and that this fact by itself would prove that they are not litigating *bona fide*; (iv) that while Ex.P.59 was stated to have been executed in favour of respondent Nos.2 to 7 as far back as 16.3.1966, even on their own showing the property was not mutated in their name in the revenue records nor were they ever recognized as owners and enjoyers of the property by any of the Government or statutory departments; (v) that the documents, such as Ex.R.15 – Lok Adalat Award dt.26.2.2005 in A.S. No.15 of 2005, Ex.R.26 dt.24.6.2004, final order under Sections 8(4) and 9 of the ULC Act, of the Special Officer and Competent Authority, ULC, Hyderabad, declaring the legal representatives of Madan Lal Gupta, as surplus holders to an extent of 8272.36 sq. meters forming part of the subject land, Ex.R.27 - G.O. Ms. No.533 dt.25.4.2005 issued by the Government of Andhra Pradesh exempting 8272.36 sq. meters, forming part of the subject land, from the provisions of chapter III of the ULC Act in favour of late Kamini Gupta, W/o.Late Madan Lal Gupta and his legal representatives who include respondent No.16, clinchingly establish that the dispute between the two branches, namely, Sugra Begum and Madan Lal Gupta was settled and the said settlement was recognized by the State Government by issuing Ex.R.27 after receiving the market value under G.O. Ms. No.456,

dt.29.7.2002. (vi) that all the parties to the previous litigation, namely, respondent Nos.8 to 15 on one side and respondent Nos.35, 55, 56, 57, 58, 64, 65, 66, 67, 68, 69, 70, 71, 72 and others on the other side, entered into a development agreement with the developer, M/s. Trendset Builders Private Limited, of which the petitioner is the Managing Director, and that M/s. Sumanjali Estates, represented by respondent No.63, and himself have participated in the said development agreement as Confirming Parties I and II respectively, that while all the warring parties, i.e., both the branches of Sugra Begum and Madan Lal Gupta, including some of the respondents to the Land Grabbing Case, have entered into a compromise, respondent Nos.2 to 7 having been nowhere in the picture, their claim of ownership and possession was wholly baseless; (vii) that in pursuance of the development agreement and the exemption granted by the Government, the petitioner has obtained Ex.R.3 - building permit, Ex.R.4 - consent order for establishment, etc., and entered into sale agreements with several third parties and spent huge amounts; and (viii) that the Special Court, ignoring the inherent lack of any semblance of right in respondent Nos.2 to 7, has erroneously and unjustly granted a comprehensive order of injunction causing grave and irreparable injury to the petitioner.

In support of his submissions, he has placed reliance on *R.S. Muthuswamy Gounder v. A. Annamalai*¹, *M/s. Power Control Appliances v. M/s. Sumeet Machines Private Limited*², *Neel Electro Techniques v. Neelkanth Power Solutions*³, *Ramjas Foundation v. Union of India*⁴, *State*

¹ AIR 1981 Mad. 220

² AIR 1994 SCW 2760

³ Judgment of Bombay High Court in Suit No.55 of 2012, dt.24.6.2014

⁴ (2010) 14 SCC 38

*of A.P. v. Hyderabad Potteries Pvt. Ltd.*⁵, *Guru Amarjit Singh v. Rattan Chand*⁶, *State of Himachal Pradesh v. Keshav Ram*⁷, *Konda Lakshmana Bapuji v. Government of Andhra Pradesh*⁸ and *Suraj Lamp and Industries Private Limited v. State of Haryana*⁹

12. Mr. E. Madan Mohan Rao, learned counsel appearing for respondent Nos.2 to 7 argued with vehemence that Ex.P.59 gift deed proves the title of respondent Nos.2 to 7, that the documents on which reliance is placed by the petitioner do not constitute documents of title, that both the branches of Sugra Begum and Madal Lal Gupta have played fraud and that these documents, which do not constitute documents of title, do not in any manner divest title from respondent Nos.2 to 7. The learned counsel further argued that the Special Court on proper appreciation of the elements of *prima facie* case, balance of convenience and irreparable injury, granted a comprehensive order of injunction with a view to protect the interests of true owners and that this Court while exercising certiorari jurisdiction cannot not interfere with the order passed on appreciation of disputed questions of fact pertaining to the *prima facie* title relating to the immovable property. In support of his submissions, the learned counsel has placed reliance on the judgments in *Syed Yakoob v. K.S. Radhakrishnan*¹⁰ and *Hafeeza Bibi v. Shaikh Farid (dead), by LRs*¹¹.

13. We have given our thoughtful consideration to the respective submissions of the learned counsel for the parties and carefully perused the record.

⁵ AIR 2010 SC 2760

⁶ AIR 1994 SC 227

⁷ AIR 1997 SC 2181

⁸ AIR 2002 SC 1012

⁹ (2012) 1 SCC 656

¹⁰ AIR 1964 SC 477

¹¹ (2011) 5 SCC 654

Let us first deal with the scope of certiorari jurisdiction. A Constitution Bench of the Supreme Court in *Syed Yakoob* (10 supra) luminously explained the true scope of certiorari jurisdiction of the High Court under Article 226 of the Constitution of India. In paragraph 7 of the report, it has held as under:

“The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.”

Various judgments following the judgment in *Syed Yakoob* (10 supra) reiterated the proposition laid down therein (See *Swaran Singh v. State of Punjab*¹², *P.G.I. of Medical Education and Research, Chandigarh v. Rajkumar*¹³ and *Devinder Singh v. Municipal Council, Sanaur*¹⁴). What emerges from the settled legal position is that the jurisdiction of the High

¹² (1976) 2 SCC 868

¹³ (2001) 2 SCC 54

¹⁴ (2011) 6 SCC 584

Court to issue writ of certiorari is supervisory in nature, that while exercising this jurisdiction the Court is not entitled to act as an appellate court, and that the findings of fact arrived at by inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. However, having regard to the finding of fact recorded by the Tribunal, writ of certiorari can be issued, if it is shown that in recording such finding the Tribunal/Court had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Writ of certiorari can be issued for correcting jurisdictional errors of the inferior Courts/Tribunals, where they exercise jurisdiction not vested in them or acted in excess of their jurisdiction or have failed to exercise jurisdiction. Similarly, if a finding of fact is based on no evidence that would be treated as an error of law which can be corrected by writ of certiorari.

13. Keeping in view the above settled parameters, we shall now consider whether the order of the Special Court suffers from any of the errors referred to in the judicial precedents referred to above.

14. Since respondent Nos.2 to 7 have instituted legal proceedings under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as 'the Act', it is necessary to refer to a few relevant provisions of the Act.

Section 2(cc) defines "land belonging to a private person" means "any land belonging to, --

- (i) an evacuee;
- (ii) a military personnel; or
- (iii) any other private individual;

The value or the extent of which or the nature of the evil involved shall be of substantial nature or in the interest of justice required.”

Clauses (d) and (e) of Section 2 defined ‘land grabber’ and ‘land grabbing’ as under:

(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 unauthorised 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;

(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 agreements or struck 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; and the term “to grab land” shall be construed accordingly.”

15. The fulcrum of the case of respondent Nos.2 to 7 lies in their claim that the petition schedule land belongs to them and that the petitioner and others have indulged in the activity of land grabbing. In order to exercise jurisdiction by the Special Court under the provisions of the Act, a person who approaches the Special Court must *prima facie* show that the land belongs to him and that the respondents and others are land grabbers who are attempting to take/have taken possession of the land without any lawful entitlement for construction of various structures thereon etc. Therefore, unless the Special Court is convinced, based on oral and documentary evidence that may be adduced by the parties, that (a) the land belongs to the complainant, (b) the respondents before it are land grabbers and (c) the activity of the respondents constituted land grabbing, the complainant would not be entitled to any relief. In the present context of the case, it is premature for this Court to examine these aspects. However, when the Special Court which entertained the

complaint and registered the same as a land grabbing case, granted an order of injunction which has a far reaching effect, it has become imperative for this Court to examine whether respondent Nos.2 to 7 have satisfied the Special Court of the existence of *prima facie* case relating to the aforementioned aspects, besides the other essential elements of balance of convenience and irreparable injury.

16. We shall now examine whether respondent Nos. 2 to 7 have made out a *prima facie* case and how the lower Court has dealt with this aspect.

In paragraph 42, the Court below has observed as under:

"Since the petitioners are claiming their right and title under Exhibit P.59 gift deed, they have to prove that the gift was acted upon and possession of the property was delivered to the petitioners. Even after the gift deed under Exhibit P.59, the name of the donor Syed Mohiuddin, the father of the petitioners is being continued in the revenue records, i.e., Sethwar and revenue records. This fact has to be proved by producing oral and documentary evidence in the main petition during the trial. The contention of the petitioners that by virtue of Exhibit P.59 and after the death of their father, they succeeded to the property in issue."

After referring to the various steps taken by respondent No.73, who was litigating against the two groups, which were fighting over the title, namely, Sugra Begum and Madan Lal Gupta, the Special Court had this to say:

"From the above facts and documents Exhibits P.23 to P.27, it is very clear that the 67th respondent from the beginning claiming right and title over the property, which their father purchased and regular patta was issued and in all the pahanies, Sethwar and Survey Records, late Syed Mohiuddin, the father of the petitioners, R.67 to 74 is recorded as Pattadar and rightful owner and their possession is after they paying all relevant taxes and dues to the authorities under revenue department as demanded by issuing demand notices. The land in dispute was assessed by the Revenue Department under A.P. Non-Agricultural Lands Assessment Act, 1963 and requested the ULC authority by issuing several notices to cancel the NOC issued in favour of the 1st respondent and proposed exemption under ULC in favour of Madanlal Gupta and others."

17. In paragraph 50, the Special Court referred to Lok Adalat Award in A.S. No.15 of 2005, filing of O.S. No.484 of 2006 by respondent Nos.56 to 59 and 65 to 72, Ex.R.16, the decree passed therein, and issue of G.O. Ms. No.533, dt.25.4.2005 regularizing the possession of the branch of

Madan Lal Gupta. In paragraph 51, the Special Court noted the following facts.

“Thereafter, the respondents 67 to 74 filed W.P. No.29104 of 2009 as per Exhibit P33 and obtained interim stay of all further proceedings in pursuance of the declaration dated 17.07.2004 issued under Section 10(3) of ULC (Ceiling and Regulation) Act, 1976 including the proceedings in G.O. Ms. No.533 on 31.12.2009 in W.P.M.P. No.37736 of 2009 and got suspended the G.O. Ms. No.533, dated 25.04.2005. Ultimately, as per Exhibit R12, W.P. No.29104 of 2009 was dismissed as withdrawn while vacating the interim orders in W.P.M.P. No.37736 of 2009, dated 31.12.2009 granted under Exhibit P33, in pursuance of the Exhibit R23 withdrawal memo signed by the respondents 67 to 74 and filed into Court.”

The balance part of the order was devoted by the Special Court to various complaints and the writ petitions filed by respondent No.73 and it suddenly jumps to the conclusion in paragraph 60 as under:

“The above facts and circumstances supported by Exhibits P.28 to 30, P.41, 43, 44 and 58 goes to suggest that the respondents to grab the land of the petitioners trespassed into the land on 01.11.2012 and kidnapped Kamlesh and another security guard, whose whereabouts are not known and in this regard he made several complaints to the concerned Police Station, the Director General of Police, Commissioner of Police, Hyderabad, to get back Kamlesh and another security guard from the clutches of the kidnappers/land grabbers by providing police picket on the petition land and he expressed readiness to pay requisite charges.”

Though the Special Court having observed in paragraph – 42 of its order that the fact that the plea of respondent Nos.2 to 7 that Ex.P.59 gift was acted upon and possession of the property was delivered to them by their father, has to be proved by producing oral and documentary evidence, no effort was made by it to *prima facie* examine the plea with reference to the documentary evidence for the purpose of appreciation of *prima facie* case, without which respondent Nos.2 to 7 were not entitled to the interim reliefs claimed by them and granted by the Court. Had the Special Court examined this aspect, it would have found the following vital facts.

(a) That respondent Nos.2 to 7 have set up title independent of and adverse to respondent Nos.73 to 80. That the recitals of the purported unstamped and unregistered gift deed (even if it is valid under

Muslim law) allegedly executed by the father of respondent Nos.2 to 7 and respondent Nos.73 to 80, would show that the donor has executed gift deed dt.31.12.1965 in favour of respondent Nos.73 to 80 and under the latter gift deed dt.16.3.1966, revoked the earlier gift and gifted the property to respondent Nos.2 to 7. That it is not the pleaded case of respondent Nos.2 to 7 that at any point of time after Ex.R.59 was purportedly executed, any settlement was reached between themselves and respondent Nos.73 to 80 and that the latter were litigating on behalf of both the branches. In the face of these facts patent on record the Special Court committed a fatal error in presuming the litigation launched by respondent No.73 as a joint litigation by both the branches of Syed Mohiuddin.

(b) That no iota of evidence was produced by respondent Nos.2 to 7 to prove that the gift was acted upon and on the contrary it is their pleaded case that the property continued to be shown in the name of their father Syed Mohiuddin.

(c) That not only the properties were not mutated in the names of respondent Nos.2 to 7, but also they have not filed any declarations before the ULC authorities at any point of time.

(d) That neither of the two branches of Syed Mohiuddin have instituted any legal proceedings to assert their rights over the subject property and on the contrary the two branches of Sugra Begum and Madan Lal Gupta were fiercely fighting the legal battle which evidently ended in passing of Ex.P.45/R.15 Award by the Lok Adalat in A.S. No.15 of 2005 as per which out of Ac.9.20 guntas, Madan Lal Gupta's branch was allotted Ac.5.00 and Sugra Begum's branch was allotted Acs.4.20 guntas.

(e) That Madan Lal Gupta and his branch filed declarations before the ULC authority which passed a final order under Sections 8(4) and 9 of the ULC Act on 24.6.2004 (Ex.R.26) declaring the declarants as holding surplus land of 8272.36 Sq. meters.

(f) That following Ex.R.15 - Lok Adalat Award, the State Government has issued Ex.R.27 - G.O. Ms. No.533, dt.25.4.2005 exempting 8272.36 Sq. meters of land in Sy. No.391 old, T.S. No.4/P, 6/P, Ward No.11, Block-E, Pre.No.8-2-409, situated at Shaikpet Village and Mandal, Hyderabad Urban Agglomeration, from the provisions of the ULC Act on receipt of compensation of Rs.1,28,58,912/-.

(g) That Ex.R.2 compromise Memo dt.24.6.2009 was entered into by all the parties to the litigation with M/s. Trendset Builders Private Limited, represented by the petitioner as its Chairman and Managing Director, followed by Ex.R.1 development agreement-cum-GPA on 29.7.2010.

(h) That while there was a truce between the parties litigating over the property, respondent Nos.73 to 80 were rest content with a flurry of complaints/representations to the ULC authorities, vide Exs.P.23, dt.16.5.1989; P.24, dt.17.4.2003; P.25, dt.15.6.2006; and Ex.P.27, dt.5.11.2009; and complaints, vide Ex.P.26, dt.23.1.2009 to the Collector, Hyderabad; Ex.P.28, dt.28.12.2009; and Ex.P.29, dt.11.11.2009 and Ex.P.30, dt.20.11.2010 to the Station House Officer, Banjara Hills Police Station.

(i) That it is only from the year 2009 that respondent Nos.73 to 80 have instituted the litigation vide W.P. Nos.29104 of 2009, 36037, 36606 and 39150 of 2012 and that admittedly, all these cases were either dismissed on merits or withdrawn or disposed of with directions either to

consider the representations or on the ground of availability of alternative remedies.

(j) That significantly respondent Nos.73 to 80 did not pursue the litigation to its logical end and the reason as per the version of the petitioner is that he along with other parties were able to settle the dispute with the said respondents.

(k) That respondent Nos.2 to 7 have started the litigation from the point where respondent Nos.73 to 80 have stopped it. To start with they have filed the L.G.O.P. out of which the present writ petition arises, in May 2014, that they have filed I.A. Nos.3258 and 3259 of 2014 for injunction against all the respondents from 8 to 60 restraining them from changing the nature of the property and also from alienating the same, and that about four months later they have filed I.A. No.4846 of 2016 against the petitioner alone seeking injunction against him from changing the nature of the property. They have also filed I.A. No.5254 of 2014 restraining the petitioner from alienating the property. Close on the heels of filing of the L.G.O.P., respondent Nos.2 to 7 chose to file W.P. No.16899 of 2014 assailing the order of the ULC authorities dt.24.6.2004, respondent Nos.2 to 5 have filed W.P. No.17693 of 2014 assailing the Lok Adalat Award dt.26.2.2005 and respondent Nos.2, 5 and 6 have filed W.P. No.18409 of 2014 questioning the building permit, dt.22.5.2013.

18. The afore-noted facts which the Special Court singularly failed to take serious notice would reveal that from 16.3.1966 when the purported gift deed was executed in favour of respondent Nos.2 to 7, till the time they have filed the L.G.O.P, they were nowhere in the picture. Very curiously, they addressed respondent Nos.73 to 80 as their family members both before the Special Court as well as before this Court. In

the counter affidavit running into 84 pages, no explanation whatsoever was offered as to why respondent Nos.2 to 7 could not get the property mutated in their names and also for their not filing declarations before the ULC authorities. As rightly submitted by Mr. M.V. Durga Prasad, the gift deed (even if it is considered as valid under Muslim law), the same is not the be all and end all in the wake of the ULC Act. Admittedly, the extent of the land under the gift deed is Acs.12.00. Each major member of a family is only entitled to exemption to the extent of 1000 Sq. meters. No explanation has been offered by respondent Nos.2 to 7 as to how they managed to retain Acs.12.00 of land without even filing declarations under the ULC Act. On the contrary, both the groups claiming under Sugra Begum and Madan Lal Gupta filed their respective declarations based on which surplus land was declared and following issuance of G.O. Ms. No.456, the State Government has issued G.O. Ms. No.533, dt.25.4.2005 (Ex.R.27) exempting the land from the provisions of the ULC Act. Curiously, respondent Nos.2 to 7 have not chosen to question the said G.O. for nine years. Similarly, they have failed to question the Lok Adalat Award as well as the final orders passed under the ULC Act for equal number of years. No explanation whatsoever has been offered by respondent Nos.2 to 7 for their approaching the Courts with such a phenomenal delay except stating that their family members were litigating. On the admitted facts of the case, as discussed above, it would be a grave travesty of truth to term respondent Nos.73 to 80 who were adversaries of respondent Nos.2 to 7 as their family members. Even assuming that respondent Nos.2 to 7 have a semblance of title under the gift deed, in order to make this alleged prior title survive, they were bound to take steps as per the changed legal position as discussed above,

but they failed to do so. Therefore, respondent Nos.2 to 7 cannot, with any legitimacy, claim that the subject land belongs to them within the meaning of Section 2(cc) of the Act. Once they failed to prove that the land belongs to them, they will have no *locus standi* to initiate proceedings under the Act and the Special Court will be denuded of its jurisdiction to enquire as to whether the petitioner and others are land grabbers and thus they have indulged in land grabbing activity, as defined under Section 2(d) and (e) of the said Act.

19. Mr. Madan Mohan Rao argued that his clients have filed three writ petitions questioning the fraudulent and collusive acts of the petitioner and others and that the same are pending before this Court. He has, however, fairly conceded that in none of these cases, this Court has passed any interim order suspending any of the proceedings pertaining to the ULC Order, Lok Adalat Award or Building Permission. *Ex facie*, this Court feels that respondent Nos.2 to 7 have engineered a litigation based on a purported paper gift deed which has not seen the light of the day for nearly five decades. Respondent Nos.2 to 7 went into hibernation for all the years and woken up all of a sudden by terming the petitioner and others, who were able to justify before the Special Court their possession based on the afore-mentioned various legal proceedings, as land grabbers. Unless all these proceedings are set at naught in the highly belated writ petitions filed by respondent Nos.2 to 7, they cannot claim any semblance of right over the subject land.

20. An order of injunction is a double edged weapon, in that, while it is a boon for a party litigating *bona fide*, it is a bane for a party who suffers such order at the instance of the other party, unleashing speculative and vexatious litigation. Unfortunately the Special Court which has failed to

observe the inherent lacunae and weaknesses in the case of respondent Nos.2 to 7, has chosen to grant a comprehensive order of injunction having far-reaching consequences. It has failed to discuss the three elements of *prima facie* case, balance of convenience and irreparable injury before granting the order of injunction. In paragraph 42 of the order extracted supra, it has rightly set the discussion in motion by observing that since they are claiming right and title under Ex.P.59 gift deed, respondent Nos.2 to 7 have to prove that the gift deed was acted upon and possession of the property was delivered to them, but it failed to carry the discussion any further and in the very next sentence, it has taken note of the fact that even after the gift deed under Ex.P.59 was executed, the name of the donor, Syed Mohiuddin, was being continued in the revenue records, i.e., Sethwar and revenue records. The Court in stead of rendering a *prima facie* finding as to whether the gift was acted upon and possession was delivered to respondent Nos.2 to 7, made a perfunctory approach by observing that the said fact has to be proved by producing oral and documentary evidence in the main petition during the trial and thereby it has ignored the fundamental principle of law, namely, it has to weigh the element of *prima facie* case and render a finding thereon. While we do not find any full-fledged discussion on the elements of balance of convenience and irreparable injury, we only find some half-baked observations on the consequences of non-granting of injunction order based on the averments relating to title made by respondent Nos.2 to 7 and accepted the same on their face value as under:

...In the instant case, it is alleged that the petitioners are the absolute owners of the petition schedule property and as the 56th respondent is having support of Gundas, antisocial elements and henchmen, the petitioners cannot resist illegal construction taken up by the 56th respondent over the petition schedule property. If the 56th respondent in pursuance of Exhibit R-1 – Development Agreement cum-GPA further proceeded with construction and complete the flats, it will become difficult

for demolition of the building and if in case, the petitioners succeed, is entitled to vacant possession of the land by demolition of the structures made thereon, which will cause irreparable loss to the respondents.

The parties in whose favour the 56th respondent entered into agreement for sale of flats and also created charge over the property in favour of various banks, project finance and also home loans raised in favour of third parties, there will also sustain loss which cannot be compensated by way of pecuniary damages. It also leads to multiplicity of proceedings. All these circumstances, cumulatively and prima facie establish that the property in dispute shall be protected and the need of protection of the petitioners right when compared with or weighed with against the need for protection of respondents rights, the balance of convenience is tilting in favour of the petitioners. In such circumstances, I find that it is better to keep the petition schedule property as it is to avoid multiplicity of proceedings and irreparable loss to the petitioners as well as to the respondents."

The above extracted observations were made based on the averments of respondent Nos.2 to 7 without any material in support thereof. The Special Court appears to be oblivious of the fact that it is granting an injunction against a person who not only *prima facie* proved his lawful possession, but also his right to raise construction under the building permit granted by the competent authority, i.e., GHMC based on Ex.R.1 – development agreement. As observed hereinbefore, none of the orders of different authorities, including the Lok Adalat Award, which lent legitimacy to the right and possession of the petitioner, have been interfered with by any Court and all these orders/proceedings are in force. By the time the Special court has passed the impugned order, the writ petitions filed by respondent Nos.2 to 7 were pending and they failed to obtain any order qua any of the orders/proceedings impugned in the writ petitions. The Special Court has also failed to realize that by granting injunction, it is helping Respondent Nos.2 to 7 to indirectly achieve what they failed to achieve directly, thereby rendering the building permit and all other final proceedings issued in favour of the parties to the development agreement nugatory. The law is well-settled that the Court does not extend its discretion in favour of a party who does not approach the Court with clean hands. Respondent Nos.2 to 7 who never bothered

to assert their right for 48 years cannot hold a person who is in *bona fide* and legal possession, to ransom.

21. Mr. Madan Mohan Rao, learned counsel for respondent Nos.2 to 7, has raised certain aspects such as non-correlation of survey number 391 with 219, proceedings of the competent authority under the ULC Act setting aside Ex.R.29 proceedings dt.7.2.2008 and revising the final order passed in favour of Madan Lal Gupta, and so on. Assuming that there are certain shortcomings in the case of the adversaries of respondent Nos.2 to 7, the legal position is well-settled that a person who approaches the Court cannot succeed based on the weakness in the case of the opposite party, but he must succeed on the strength of his own case.

22. In the light of the discussion made hereinbefore, respondent Nos.2 to 7 have miserably failed to establish the *prima facie* case of title and possession. As they failed to take the required steps necessitated by the ULC Act and legalize their alleged title and possession, without which Ex.P.59, even accepting it as a valid document, remains a mere paper, respondent Nos.2 to 7 failed to prove their *prima facie* title. Similarly, they also failed to get the property mutated in their names in order to prove that the Ex.P.59 was acted upon. Hence, they are not entitled to an order of injunction against the persons who have established their *prima facie* right to the property and legal entitlement to remain in possession and enjoy the same. Thus, at this stage, by alleging certain defects in the title of the petitioner, respondent Nos.2 to 7 cannot justify the order passed in their favour by the Special Court.

23. Though the Special Court has failed to discuss the element of balance of convenience, we feel that it is necessary to deal with the same. The petitioner pleaded that in pursuance of Ex.R.2 compromise memo,

dt.24.6.2009, Ex.R.1 - development agreement was entered into on 29.7.2010, building permit was obtained under Ex.R.3, and that he has completed all the six blocks with four cellars including sub-cellar and five upper floors by spending about Rs.75.00 crores so far and has been incurring recurring expenditure of Rs.1.00 crore per month. The Special Court has not even referred to these pleas of the petitioner. More over, it is the specific case of the petitioner that he has only 51% share in the constructed property. The fact that respondent Nos.2 to 7 have left out the land owners who hold 49% share and claimed injunction only against the petitioner, exposes total lack of bona fides on their part. They have not explained as to why they have filed fresh injunction application against the petitioner while not pursuing I.A. Nos.3258 and 3259 of 2014 filed against respondent Nos.8 to 60 in the LGOP, including the petitioner. In the light of these facts, we have no hesitation to hold that the balance of convenience does not lie in favour of respondent Nos.2 to 7 for granting the injunction order. Further, the element of irreparable injury also lies in favour of the petitioner as the whole project will go haywire, if, at this stage the petitioner is restrained from completing the further construction and honouring the commitments to third parties.

24. In the light of the above discussion, we have no qualm of conscience in coming to the conclusion that it is an eminently fit case for exercising certiorari jurisdiction as the Special Court has made a perverse approach and has failed in weighing the elements of *prima facie* case, balance of convenience and irreparable injury, which are essential for granting an injunction order. We are also satisfied that if the order of injunction is not set aside it will result in grave miscarriage of justice.

25. For the afore-mentioned reasons, the impugned order is quashed and the writ petition is allowed with costs of Rs.25,000/- (Rupees Twenty Five Thousand only).

As a sequel to disposal of the writ petition, W.P.M.P. No.32765 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

21-09-2016

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Note: LR copy to be marked.

(B.O)

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