

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice M.S.K.Jaiswal

Writ Petition No.2797 of 2016

Date: 10.11.2016

Between:

Mekala Komaraiah died per LRs.

(1) Mekala Venkataiah and 5 others

.. Petitioners

and

The State of Telangana

rep. by its Prl.Secretary

Revenue Department,

Secretariat, Hyderabad and 7 others

. Respondents

Counsel for the Petitioners :

Mr.Naseeb Khan

for Mr.Venkateswar Valmiki

Counsel for respondent Nos.1 to 6: GP for Revenue (Assignment)

Counsel for respondent Nos.7 & 8: GP for Home (TS)

The Court made the following:

Order : (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed for issuance of Certiorari for quashing Order, dated 30-11-1994, in LGA.No.31 of 1994 on the file of the Special Court under the A.P.Land Grabbing (Prohibition) Act (for short 'the Special Court'), whereby Order, dated 26-08-1994, in OP.No.796 of 1990 on the file of the Special Tribunal under the A.P.Land Grabbing (Prohibition) Act –cum- District Judge, R.R.District (for short 'the Special Tribunal'), was confirmed.

We have heard Mr.Nazeer Khan, learned Counsel appearing for Mr.Venkateswar Valmiki, learned Counsel for the petitioners, and the learned Government Pleader for Revenue (Assignments) appearing for respondent Nos.1 to 6.

The petitioners claim to be the legal heirs of one Mekala Komaraiah. It is their pleaded case that the said Komaraiah died on 03-05-1995; that during his lifetime, he was in possession and cultivation of the land admeasuring Acs.15.10 guntas in Survey No.73 of Mallapur Village, Saroor Nagar Mandal, since 1960; and that after the death of the said Komaraiah, the petitioners being his legal heirs inherited the said property and are in continuous possession of the same.

The petitioners tried to trace their ownership over the said property by referring to various facts, which need not be discussed for disposal of this Writ Petition.

The petitioners have averred that in the proceedings initiated by the Revenue authorities under the A.P.Land Encroachment Act, 1905 (for short 'the 1905 Act'), in the year 2014, they came to know that proceedings under the A.P.Land Grabbing (Prohibition) Act, 1982 (for short 'the 1982 Act'), were initiated against late Komaraiah *vide* OP.No.796 of 1990; that Order, dated 26-08-1994, was passed therein against late Komaraiah; and that the said order was confirmed *vide* Order, dated 30-11-1994, in LGA.No.31 of 1994. They have further averred that on coming to know about the said Orders, they have taken steps to file this Writ Petition as their possession is being threatened.

On behalf of the respondents, respondent No.6- Deputy Collector and Tahsildar, Saroornagar Mandal, filed a counter-affidavit wherein he has *inter alia* averred that as per the revenue records of Mallapur Village, the land admeasuring Acs.48.04 guntas has been recorded as "Government Land" and that without any rights, late Komaraiah occupied an extent of

Acs.15-00 cents; that in the year 1990, the then Mandal Revenue Officer, Saroornagar Mandal, filed a Land Grabbing Case before the Special Tribunal, which was taken on file as OP.No.796 of 1990; that the Special Tribunal has examined the case with reference to the material produced by the Mandal Revenue Officer, Saroornagar, and allowed the same *vide* Order, dated 30.09.1991, directing late Komaraiah to deliver the subject land and that in pursuance of the said order, the Mandal Revenue Inspector, Sarornagar Mandal, has taken possession of the subject land on 03.10.1992 by conducting Panchanama and issued Form-VII. Alleging that the aforesaid Order of the Special Tribunal was passed *ex parte*, late Komaraiah filed Land Grabbing Appeal No.11 of 1992 on the file of the Special Court, which, after hearing the learned Counsel for both parties, passed Order, dated 27-06-1994, allowing the said appeal and remanding the matter to the Special Tribunal with a direction to it to give an opportunity to late Komaraiah to file counter and to both parties to lead evidence, and thereafter, dispose of the OP by the end of August 1994. After remand, the Special Tribunal, after considering the oral and documentary evidence adduced by the parties, allowed the OP and directed late Komaraiah to vacate the subject land, deliver

vacant possession of the same to the Mandal Revenue Officer, Saroornagar, within one month and also to pay profits @ Rs.8,000/- per year from 01-05-1985 till the date of delivery of possession of the subject land. Aggrieved by the same, late Komaraiah filed Land Grabbing Appeal No.31 of 1994 before the Special Court, which by Order, dated 30-11-1994, dismissed the Appeal, confirmed the Order passed by the Special Tribunal to the extent of recovery of possession of the subject land and set aside the order to the extent of recovery of mesne profits.

It is further averred that on 30-06-1994, the Village Revenue Officer, Mallapur Village, submitted a report to the office of respondent No.6 wherein it was stated that petitioner No.1, who is the son of late Komaraiah, and others were again trying to encroach the land to an extent of Acs.8-00 guntas in Survey No.73 of Mallapur Village and start agricultural operations therein; that after examining the available record and also the judgment of the Special Court referred to above, show cause notices were issued to the petitioners herein; that after considering their reply, an order was passed under Section 6 of the 1905 Act, on 02.09.2014; and that thereafter, the petitioners were again evicted from a portion of the encroached land. It is further averred that the said order has attained

finality as the petitioners have not filed any appeal against it. It is also averred that Order, dated 26-08-1994, in OP.No.796 of 1990, as confirmed by the Special Tribunal by Order, dated 30-11-1994, in LGA.No.31 of 1994, has become final and that the petitioners cannot be permitted to reopen the matters, which have attained finality, after more than 22 years.

We have carefully considered the submissions of the learned Counsel for the parties with reference to the material available on record.

The material filed by the respondents along with the counter-affidavit would show that by Order, dated 30-09-1991, in OP.No.796 of 1990, the Special Tribunal has ordered eviction of late Komaraiah through whom the petitioners herein have been making claim over the subject property. Evidently, the said order was an *ex parte* order. Subsequently, by Order, dated 27-06-1994, passed in LGA.No.11 of 1992 filed by late Komaraiah, the matter was remanded to the Special Tribunal, which, after holding a detailed trial and on appreciation of both oral and documentary evidence adduced by the parties, passed the eviction order on merits on 26-08-1994. The record further shows that during the interregnum of

the afore-mentioned two orders, physical possession of the subject land was taken by the respondents on 03-10-1992 under Panchanama and Form No.VII was also issued on the same day by declaring that possession was taken. Order, dated 26.08.1994, in OP.No.796 of 1990 was carried in appeal by late Komaraiah *vide* LGA.No.31 of 1994. The Special Court, on a thorough discussion of the material on record, passed Order, dated 30-11-1994, dismissing the appeal and confirming the Order passed by the Special Tribunal to the extent of recovery of possession of the subject land. A perusal of the order of the Special Court shows that a specific finding was rendered therein that Ex.B.2, on which late Komaraiah has placed reliance was only a temporary permission for eksaal cultivation and that with the expiry of one year by 01-07-1986, he has lost his right to be in occupation of the subject property.

After the death of late Komaraiah, when the petitioners sought to encroach upon the subject land, notices under Section 7 of the 1905 Act were issued by respondent No.6 on 01-07-2014 and after considering the reply filed by the petitioners, an Order under Section 6 of the 1905 Act, was passed on 02-09-2014 by holding the petitioners as encroachers. A perusal of this order shows that there is a

specific reference to Order, dated 30-09-1991, passed by the Special Tribunal in OP.No.796 of 1990.

The facts discussed above would clinchingly establish that late Komaraiah has suffered the eviction order by the Special Tribunal and also the same was confirmed in appeal by the Special Court during his lifetime. Even the petitioners, who are his legal heirs, have also suffered Order, dated 02-09-2014, passed under Section 6 of the 1905 Act, which has attained finality as they failed to file an appeal against the said order. In the face of these admitted facts, we are of the opinion that the petitioners cannot be permitted to raise the issues, which were already settled, in this Writ Petition more than 22 years after the Special Court has dismissed the appeal filed by their late father. Not only that conclusive findings were rendered by the Special Tribunal and the Special Court but also the petitioners have suffered the eviction order under the 1905 Act. In these facts and circumstances of the case, both on merits as well as on the ground of laches, the Writ Petition is liable to be dismissed.

In the result, the Writ Petition is dismissed.

As a sequel to dismissal of the Writ Petition,
Miscellaneous Petitions, pending if any, stand disposed of as
infructuous.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Dt: 10th November, 2016
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