

**THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**WRIT PETITION NO.6481 OF 2009**

**O R D E R**

*(per Hon'ble Sri Justice Sanjay Kumar)*

Challenge in this writ petition is to the judgment dated 11.12.2008 passed by the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for brevity, 'the Act of 1982'), Hyderabad, in L.G.C.No.42 of 2006. This land grabbing case was filed by the writ petitioner to declare the second respondent herein as a land grabber under the Act of 1982 as he himself was the absolute owner of the petition schedule property. He sought a further direction to evict the second respondent therefrom and to hand over its vacant possession to him. By the impugned judgment dated 11.12.2008, the Special Court dismissed the case. Hence, this writ petition.

No interim orders were granted during the pendency of this writ petition.

Heard Sri Resu Mahender Reddy, learned counsel for the petitioner, and Sri O.Manohar Reddy, learned counsel appearing for Sri A.P.Reddy, learned counsel for the second respondent.

The petition schedule property in L.G.C.No.42 of 2006 was an extent of Ac.0.18 guntas in Survey No.322 and Ac.0.22 guntas in Survey No.324 of Narsingi Village, Rajendranagar Mandal, Ranga Reddy District, totally admeasuring Ac.1.00 guntas. The petitioner claimed that he acquired these lands along with other extents from one G.Raju @ G.Rajasekhar under registered sale deed bearing document No.6821 of 2005 dated 29.06.2005 (Ex.A2), for valuable consideration. In turn, G.Raju @ G.Rajasekhar had purchased the

petition schedule property along with the other extents under two registered sale deeds, bearing document No.7947 of 1990 dated 25.06.1990 (Ex.A3) and document No.14880 of 1990 dated 10.08.1990 (Ex.A4) respectively from the previous owners, *viz.*, Laxminarayan Pershad and Shankar Pershad. Laxminarayan Pershad is none other than the father of the second respondent. Laxminarayan Pershad had executed a registered General Power of Attorney (GPA) bearing document No.492 of 1988 dated 11.05.1988 (Ex.A6) in favour of one S.Rameshwar authorising him to sell his land admeasuring Acs.2.02 guntas in Survey No.324/a of Narsingi Village, Rajendranagar Mandal, Ranga Reddy District. Pursuant thereto, S.Rameshwar executed Ex.A3 sale deed dated 25.06.1990 in favour of G.Raju @ G.Rajasekhar. Similarly, Shankar Pershad executed a registered GPA bearing document No.2420 of 1988 dated 07.11.1988 (Ex.A7) in favour of S.Rameshwar authorising him to sell his land admeasuring Acs.2.02 guntas in Survey No.324 of Narsingi Village, Rajendranagar Mandal, Ranga Reddy District. Pursuant thereto, S.Rameshwar executed Ex.A4 sale deed dated 10.08.1990 in favour of G.Raju@ G.Rajasekhar.

The writ petitioner claimed that he was a land developer but for want of a layout sanction from the concerned authority, he could not develop the petition schedule property along with other extents into plots. However, as there was escalation in real estate values, he proposed to construct a compound wall and a security room and accordingly secured permission from the Gram Panchayat on 04.07.2005 (Ex.A11) and constructed a security room apart from raising a basement encircling the entire property. After construction of the security room and raising a basement, he had to stop

construction work due to some reasons. While so, on 17.08.2006, the second respondent came to the petition schedule property along with a mob and started constructing a compound wall on the existing basement. The second respondent along with his men allegedly broke open the lock of the security room in the petition schedule property and stored their construction material there. The petitioner lodged a complaint with the police but he could not resist the acts of the second respondent. He therefore approached the Special Court by way of the subject land grabbing case for relief.

The Special Court took cognizance of the case and a notification was published in A.P. Gazette No.299 dated 18.09.2006. Report of the Mandal Revenue Officer concerned was called for and the same was received on 03.10.2007. The second respondent herein, being the sole respondent in the case, filed his counter denying the claims of the petitioner. He asserted that he had inherited the petition schedule property by succession and could not be labelled a land grabber. He stated that his father, Laxminarayan Pershad, was the absolute owner and possessor of the petition schedule property. G.Siddiramappa, the father of G.Raju @ G.Rajasekhar, the vendor of the petitioner, was stated to be a close friend of his father and he obtained a power of attorney from his father in the name of his relative and partner, S.Rameshwar, on 11.05.1998 with a view to develop the property. However, after execution of the said power of attorney, his father expired on 01.08.1988. This fact was stated to be well within the knowledge of G.Siddiramappa, S.Rameshwar and G.Raju @ G.Rajasekhar as all of them attended the funeral and other ceremonies of his father. In effect, the power of attorney executed by his father ceased to be operative upon his death. The power of

attorney holder therefore had no power to convey the property on the strength of the said document after the death of the principal. The second respondent therefore asserted that the sale deeds executed by S.Rameshwar were void *ab initio* and did not confer title on the purchaser. He further claimed that possession of the land was never delivered pursuant to these sale deeds and that he was in possession and enjoyment of the land as its rightful owner, being a Class-I heir of his father, Laxminarayan Pershad.

The petitioner examined himself as P.W.1 and marked Ex.A1 to A11 in evidence. The second respondent examined himself as R.W.1 and marked Exs.B1 to B12. The Sarpanch of Neknampur Gram Panchayat was also examined by him as R.W.2. This witness spoke about the death of the Laxminarayan Pershad, the father of the second respondent, on 01.08.1988, duly supported by the death certificate dated 30.08.1988 (Ex.B6).

The Special Court framed the following issues for consideration:

1. 'Whether the applicant is the owner of the application schedule property?
2. Whether the rival title set up by the respondent is true, valid and binding on the applicant?
3. Whether the respondent is a land grabber within the meaning of Section 2(d) and (e) of the Act?
4. To what relief?'

Dealing with issues 1 and 2, the Special Court observed that the death of Laxminarayan Pershad was established in the light of the independent evidence of R.W.2, the Sarpanch of Neknampur Gram Panchayat from 1988-1993. The petitioner did not dispute the fact that R.W.2 was the Sarpanch during that period. Further,

Section 54 of the Andhra Pradesh Gram Panchayats Act, 1964, prescribed that the Gram Panchayat would be the custodian of the records pertaining to births and deaths in the village. Significantly, Ex.A6 GPA dated 11.05.1988 showed the age of Laxminarayan Pershad as on that date to be 90 years. The Special Court therefore accepted that Laxminarayan Pershad must have died on 01.08.1988, as certified by Ex.B6 death certificate. The Special Court also took note of the fact that no suggestion was put to either R.W.1 or R.W.2 that the date of death of Laxminarayan Pershad was not 01.08.1988 and that it was some other date. Further, the failure on the part of the petitioner to examine G.Siddiramappa or S.Rameshwar or G.Raju @ G.Rajasekhar was taken into account and the Special Court drew an adverse inference therefrom, as they were material witnesses who could have spoken about not only the details of the transaction but also the date of death of Laxminarayan Pershad. In this regard, the Special Court noted the contention of the second respondent that all three of them attended his father's funeral.

That apart, the second respondent clinchingly established that his father, Laxminarayan Pershad, was the original pattadar and possessor of the petition schedule property. The pahanies for the years 1985-86, 1986-87, 1987-88, 1988-89 and 1989-90 (Ex.B4) confirmed this.

The Special Court accordingly held that the transactions by the GPA holder, S.Rameshwar, after the death of the principal, Laxminarayan Pershad, did not convey lawful title to G.Raju @ G.Rajasekhar and in consequence, G.Raju @ G.Rajasekhar could not have conveyed lawful title to the petitioner. The mutation effected in the revenue records and the other documentary evidence produced

by the petitioner on the strength of such sale deeds were therefore held to be of no legal significance. In consequence, the Special Court held that the petitioner had failed to establish his right, title and legal possession over the petition schedule property and accordingly answered both issues 1 and 2 in favour of the second respondent. In the light of the findings recorded on both the issues, the Special Court also held in favour of the second respondent on issue No.3. The land grabbing case was accordingly dismissed.

Sri Resu Mahender Reddy, learned counsel, would contend that reliance placed by the Special Court upon Ex.B6 death certificate and the deposition of R.W.2 was not warranted as the Sarpanch (R.W.2) failed to produce the actual register that had to be maintained by the Gram Panchayat as required by law. He would point out that the second respondent in his deposition before the Special Court stated as follows:

‘The GPA given to Rameshwar is not cancelled. My father and we demanded the attorney Rameshwar for payment of money. During the life time of my father and after his demise demand was made to Rameshwar for money. The said demands are in the years 1988, 1990 and 1995...’

Learned counsel would therefore contend that as the second respondent was demanding money even up to the year 1995, long after the alleged death of his father in 1988, he is deemed to have acquiesced in the sale by his father’s GPA and cannot seek to challenge the same at this late stage.

We however find no merit in either of these contentions.

As rightly pointed out by the Special Court, once the second respondent produced Ex.B6 death certificate, which was duly confirmed by the Sarpanch of the Gram Panchayat (R.W.2), the onus shifted to the petitioner to disprove the claim of the second

respondent that his father died on 01.08.1988. He took no steps whatsoever to discharge this onus. G.Raju @ G.Rajasekhar and his father, G.Siddiramappa, and S.Rameshwar, the GPA holder, were not even examined. When the second respondent specifically claimed that all three of them attended his father's funeral, examination of these witnesses by the petitioner was crucial to disprove the claim of the second respondent that his father had died on 01.08.1988. The Special Court therefore rightly drew an adverse inference from this failure under Section 114 of the Indian Evidence Act, 1872.

As regards the second aspect, it may be true that the second respondent took no steps after the death of his father to assert his own title over the petition schedule property and may have even demanded money from the GPA holder. However, acquiescence by him to this extent would not have the effect of vesting A3 and A4 sale deeds with legality, as they were admittedly executed by the GPA holder after the death of the principal. Once the foundation for the authority of the GPA holder, being the deed of GPA ceased to be operative due to the death of the principal, the GPA holder had no power in law to convey title over the property covered by such deed of GPA. The question of the second respondent vesting this illegal transaction with legality, by acquiescence, therefore does not arise.

On the above analysis, this Court finds that the petitioner was not the lawful owner and possessor of the petition schedule property, whereby he could turn around and seek a declaration that the second respondent, the lawful owner of the petition schedule property by succession, was a land grabber. The judgment dated 11.12.2008 of the Special Court in L.G.C.No.42 of 2006 holding to this effect therefore does not warrant interference either on facts or in law.

We therefore find no merit in this writ petition and the same is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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**SANJAY KUMAR,J**

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**T.AMARNATH GOUD,J**

**16<sup>th</sup> OCTOBER, 2017**

**PGS**

