HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION No.5964 of 2012

ORDER:

This Civil Revision Petition is filed by the petitioners aggrieved by the order dated:19-10-2012 in Transfer Original Petition No.467 of 2012 passed by the learned Principal District Judge, West Godavari, Eluru.

2. The contention of the petitioners is that the Land Grabbing Court is a Special Tribunal and the Suit cannot be transferred to Land Grabbing Court which has no power/jurisdiction to trial a civil Suit. It is further contended that by trying the Suit by the District Court/Land Grabbing Court, the petitioners will be loosing right of appeal.

3. Per contra, Counsel for the respondents contended that to avoid conflicting judgments since the parties are one and the same, and the Principal District Judge is a designated Land Grabbing Court, it can have power to withdraw the Suit from Senior Civil Judge and try along with Land Grabbing case.

4. Now, the point that arose for determination is:

"Whether the civil Suit can be withdrawn by the District Judge by exercising power under section 24 of Civil Procedure Code and file along with Land Grabbing Court which is a Special Court especially Suit for cases under A.P. Land Grabbing (Prohibition) Act, 1982?"

5. The undisputed facts are that the O.P. No.403/2011 is filed against the respondents herein before the Special Tribunal under A.P.

Land Grabbing Act, (Principal District Judge, West Godavari, Eluru) under sections VII, VII (A) (1) and section 8 of the A.P. Land Grabbing (Prohibition) Act, 1982.

The respondents also filed O.S.No.270/2008 on the file of the Principal Senior Civil Judge, Eluru against 2nd petitioner herein for declaration that they are owners of the schedule property.

6. The 1st petitioner herein filed Transfer O.P. No.467/2012 under section 24 of Civil Procedure Code for transferring the suit in O.S.No.270/2008 from the file of the Principal Senior Civil Judge, Eluru to the Court of the District Judge, West Godavari, Eluru, so as to try the same along with O.P.No.403/2011. The Trial Court allowed the Transfer O.P ordering to transfer the Suit in O.S.No.270/2008 on the file of Principal Senior Civil Judge, Eluru to the file of District Court, West Godavari, Eluru, so as to try the same simultaneously along with L.G.O.P. No.403/2011, pending on its file. Though the Principal District Judge, West Godavari, is the designated Court to decide the cases filed under A.P. Land Grabbing (Prohibition) Act, 1982 transfer of suit in O.S.No.270/2008 from the file of Principal Senior Civil Judge, Eluru, is not going to be ordered in such capacity and the relevant petition is entertained under section 24 of the Civil Procedure Code by the Principal District Judge, West Godavari, in the capacity as such. Further, ordered that the suit in O.S.No.270/2008 from the file of Principal Senior Civil Judge, Eluru, will be transferred to District Court, Eluru and no direction will be given to number it as land grabbing case. In view of the above facts, it cannot be held that the District Judge who is also a Special Tribunal has no power to transfer the Suit in question. So long as the District Judge treats the matter as original

suit without converting the same into land grabbing case, transfer of such suit cannot be called as illegal.

7. In the case of V. RAJESHWAR RAO (Dr.) v. M. YADAGIRI REDDY AND OTHERS[1] where this High Court held that under section 8 (8) of the A.P. Land Grabbing (Prohibition) Act, 1982 contemplates that the District Court cannot withdraw the suit pending before any other subordinate court and direct the transfer of the same to the Special Court and the District Court are mutually exclusive. One cannot be said to be the subordinate Court to the other. The Special Court constituted under A.P. Land Grabbing (Prohibition) Act cannot direct transfer of a case pending before civil Court in exercise of power under Section 8 (8) of the Act unless there is a specific averment of land grabbing in the matter and unless it was filed and pending before advent of the act and establishment of Special Court. Section 8 (8) shows all the matters which are pending before various Civil Courts having been instituted earlier to the advent of the Act and which would have been within the jurisdiction of the Special Court shall stand automatically transferred to the Special Court. Such a transfer is by means of operation of law in view of the provisions of sub-section (8) of Section 8 of the Act. Therefore, all the matters which are pending before the Civil Courts immediately before the constitution of the Special Court will not come within the jurisdiction of the Special Court although the question of title is involved and the allegation that land has been encroached by the opposite party is alleged inter alia in the plaint, except those matters which come within the jurisdiction of the Special Court.

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[1] 2007 (1) ALT 306 (D.B.)

Section 24 of the Code of Civil Procedure enables the District Court to withdraw a case pending before any subordinate Court and transfer the same to any other subordinate Court or to is file. Section 24 of the Code of Civil Procedure cannot be invoked by the Special Court although it has all the trappings of a Civil Court. Therefore, but for the provisions of sub-section (8) of Section 8 of the Act, it is not well within the competency of the Special Court to direct the transfer of a case which is pending before a Civil Court for adjudication having been instituted far subsequent to the advent of the Act and establishment of the Special Court/Special Tribunal. Even the District Court cannot withdraw a suit pending before any other subordinate Court and direct the transfer of the same to the Special Court since the jurisdictions of the Special Court and the District Court are mutually exclusive. One cannot be said to be the subordinate Court to the other.

8. By applying the same to the facts of the case, I am of the considered view that the observation of the District Court under 24 of the Civil Procedure Code, the District Judge power to withdraw the Suit from the Senior Civil Judge and tried by the District Judge in the capacity of the District Judge along with L.G.O.P., is perverse. By such transfer of the suit in O.S.No.270/2008 from the file of Principal Senior Civil Judge to the Land Grabbing Court which has no power/jurisdiction to trial a civil Suit, the petitioners will be loosing right of appeal. The order in question is illegal because the Special Court undoubtedly has all the trappings of a Civil Court. The provisions of the Code of Civil Procedure, as are not inconsistent with the provisions of the Act, are made applicable to the proceedings before the Special Court. There is no other provision under the Act which enables the Special Court to

direct the transfer of the cases pending before the Civil Courts which have been instituted subsequent to the advent of the Act and establishment of the Special Court or the Special Tribunal, as the case may be. Thus, the civil Suit cannot be transferred to Land Grabbing Court (Special Tribunal) which has no power/jurisdiction to conduct the trial. The petitioners are loosing right of appeal if the matter is tried before the District Court/Land Grabbing Court.

9. In the result, Civil Revision Petition is allowed while setting aside the order dated:19-10-2012 in Transfer Original Petition No.467 of 2012 passed by the learned Principal District Judge, West Godavari, Eluru.

Pending Miscellaneous Petitions, if any, shall stand closed.

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JUSTICE N. BALAYOGI

Dated:27-11-2018

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