

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE MS.JUSTICE J.UMADEVI

WRIT PETITION No. 7888 of 2004

ORDER: (Per Hon' ble Sri Justice C.Praveen Kumar)

1) The present writ petition came to be filed aggrieved by the order dated 05.03.2004 passed by the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, in L.G.C.No.128 of 1999, rejecting the request of the petitioner to take action against the respondents under Section 8 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short "the Act"); to declare the respondents as land grabbers; to evict them from the schedule property; put her in possession of the same and to award compensation.

2) The averments made by the petitioner in her application filed under Section 8 of the said Act before the Special Court under the A.P. Land Grabbing (Prohibition) Act, hereinafter referred to as 'the Special Court', are that the husband of the petitioner, who is a defence personnel purchased a part of house bearing No.27-125/ 1 in plot No.22, Sy.Nos. 631, 638 and 639 admeasuring 222 square yards situated at Malkajgiri, Vallabh Nagar, Ranga Reddy District, under a registered sale deed dated 23.08.1998, from respondent No.4 therein, who was shown as pattadar of the land in Sy.Nos. 638 and 639. Taking advantage of their absence in Hyderabad, respondents 1 and 2 grabbed the said land. In the month of July,

1999, when the petitioner and her husband went to see their plot, they found that respondents 1 and 2 constructing a house along with mulgies. When questioned, they stated that respondents 3 and 4 sold the said land to them. In spite of their protest, respondents 1 and 2 have completed the illegal construction stating that they too have a registered sale deed of the year 1997, executed by respondents 3 and 4. It is stated that respondents 1 to 4 un-authorisedly grabbed a part of house bearing No.27-125/ 1, and raised structures. Hence, filed the said land grabbing case before the Special Court.

3) Respondents 1 and 2 filed their counter denying the purchase of plot No.22 by the husband of the petitioner, from respondent No.4. It is stated that originally the land bearing Sy.Nos. 638 and 639 belongs to P.Narayana Rao, and one G.Ramaswamy was the protected tenant. The pattadar P.Narayana Rao died in the year 1959 and thereafter the said Ramaswamy used to cultivate the land till his death and after his demise, respondent No.3, who is his son, continued to be the cultivator till the layout was approved by the Gram Panchayat, Malkajgiri, in the year 1966. The said layout was made in the name of respondents 3 and 4 and accordingly, the land was divided into plots. In the year 1986 respondent No.4 sold the land to respondent No.3 by receiving the sale consideration and respondent No.3 became as owner and possessor of the said land with an absolute right. Thereafter, respondent No.4 executed registered general power of attorney in favour of respondent No.3 in respect of land admeasuring Ac.2.20 gts., vide document No.596

of 1989. It is stated that respondent No.1 purchased plot No.22 with two rooms bearing House No.45-467/ 1 admeasuring 222 square yards, situated in Prashant Nagar Colony, Malkajgiri from respondent No.3, through registered sale deed bearing document No.1832/ 1998, dated 07.04.1998 and was put in possession. Respondent No.2 is the husband of respondent No.1. They constructed a house in the said land by spending Rs.7.00 lakhs and occupied the same in the month of April, 1999 itself. Hence, submitted that they are the bonafide purchasers and are not the land grabbers.

4) Respondent No.3 filed counter denying the purchase made by the petitioner vide registered sale deed dated 23.03.1998. It is stated that the said sale deed is a sham and nominal document and the same was brought into existence only to deprive the rights of the respondents over the schedule land. Respondent No.4, who is the brother of the petitioner, created the sale deed so as to defeat the right of respondent No.3, by virtue of earlier transaction. It is stated that his father was a protected tenant of the said land and after his demise, he continued to be in occupation and possession of the land and the same was reflected in the revenue records. While things stood thus, on 05.01.1986, respondent No.4 along with his two brothers executed an agreement in favour of respondent No.3 stating that they sold the land in Sy.Nos. 638 and 639 towards settlement of loan of Rs.4.75 lakhs and they retained an extent of Ac.1.175, out of said land. To give effect to the said agreement, respondent No.4 executed a registered general power of attorney

vide document No.596 of 1989, in favour of respondent No.3 empowering him to deal with the said land. Being power of attorney holder, respondent No.3 is said to have sold the land admeasuring 222 square yards to respondent No.1 vide registered document No.1832 of 1998, dated 07.04.1998. After purchasing the said plot, respondents 1 and 2 have constructed a pucca house and at present residing in the said house. It is also stated that the mother of the petitioner by name Sakkubai filed O.S.No.269 of 1991 against respondent No.3 and others seeking declaration of title and partition, which was dismissed. The mother of the petitioner also filed C.C.No.164 of 1992 before the II Metropolitan Magistrate, Hyderabad, which was dismissed. She also filed C.C.No.149 of 1994 against respondents 3 and 4 alleging forgery, which was dismissed on merits on 30.08.1996 holding that they are innocent of the charge. Aggrieved by the same, she filed CrI.A.No.726 of 1998, before this Court, which was also dismissed on 30.06.1998. In view of the above, it is stated that the petitioner has no right or title over the schedule land.

5) Respondent No.4 filed counter stating that he never authorized respondent No.3 to execute any deeds of sale. In fact the said general power of attorney come to an end with the sale of all the available lands and this fact has been admitted by the third respondent in his evidence, as DW2, in O.S.No.296 of 1991. It is nothing but fraud and unjust enrichment on the part of the third respondent in selling plot No.22 in favour of respondents 1 and 2, which he has no right to do so. The said sale deed is

unenforceable and not valid under law. Consequently, respondents 1 and 2 have no title to the said land. It is pleaded that there is no collusion between respondent No.3 and respondent No.4.

6) On the above pleadings, the Special Court framed the following points for consideration:

(1) Whether the sole applicant has title to the application schedule property?

(2) Whether the rival title set up by the respondent is true, valid and binding?

(3) Whether the applicant, in case of her success, is entitled to the compensation as claimed?

(4) Whether the respondents are land grabbers within the meaning of Act XII of 1982?

(5) Whether this LGC is maintainable for the reason mentioned by the respondents viz. that the application schedule property is a house property?

(6) To what relief?

7) In support of her plea, the petitioner examined PWs.1 and 2 and also got marked Exs.A1 to A16. On behalf of the respondents, RWs.1 and 2 examined and Exs.B1 to B16 were marked.

8) On appreciation of oral and documentary evidence, the Special Court came to the conclusion that Ex.A1 is a nominal sale deed, which was brought into existence for a wrongful gain, and the respondents 1 and 2 are bonafide purchasers who proved their title. The Special Court further held that as the respondents 1 and 2 have established their rival title, they are bonafide purchasers under Ex.B1, and the petitioner failed to prove her title over the schedule land. Hence, the respondents cannot be treated as land

grabbers, more so when they are in possession of the property as bonafide purchasers.

9) Learned counsel for the petitioner would submit that the Special Court erred in holding that respondents 1 and 2 are bonafide purchasers. In fact the petitioner purchased the schedule land prior to the sale deed of respondents 1 and 2. The Special Court ought to have passed an eviction order as the petitioner established her title by producing Ex.A1-sale deed which is prior to the purchase made by respondents 1 and 2.

10) On the other hand, the learned counsel for the respondents would submit that the Special Court was right in holding that the respondents 1 and 2 are bonafide purchasers and they do not come under the definition of land grabbers. It is pleaded that Special Court rightly dismissed the L.G.C. filed by the petitioner, which warrants no interference.

11) The A.P. Land Grabbing (Prohibition) Act is a special Act enacted by the State so as to curb the activity of land grabbing by the unscrupulous elements and mafia. Clauses (d) and (e) of Section 2 of the Act seek to define the expressions "land grabber" and "land grabbing" respectively, which read as under:

2(6) "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 unauthorized 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.

2(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 licence agreements or any other illegal agreements in respect of such lands, or to construct unauthorized 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 unauthorized structures; and the term "to grab land" shall be construed accordingly.

12) A combined reading of these provisions would show that if a person takes possession of the land in question unauthorisedly, without any lawful entitlement thereto and with a view to illegally take possession of such lands or enter into or create illegal tenancies or construct un-authorized structures thereon, or do other acts as enumerated in Clause (e) of Section 2, inter alia such person is said to have committed the act of land grabbing and is a land grabber and the person who gives financial aid to such persons or the person who collects or attempts to collect from any occupier of such lands, rent, compensation and other charges by criminal intimidation or who abets the doing of any of the above mentioned acts are also land grabbers.

13) As seen from the record, the petitioner, who is examined as PW.2, admitted in her evidence that before purchase of the plot, they verified the original layout plan, which was obtained jointly by respondents 3 and 4. She did not enquire why the name of respondent No.3 find place in the layout plan and in what way he is connected with the land.

14) To establish their title to the schedule land, respondent No.2 examined as RW.2. In his evidence, he stated that his wife purchased a house bearing No.45-467/1 situated at Prashanth Nagar consisting of two rooms and measuring 222 square yards in Sy.No.638 and 639, under a registered sale deed dated 07.04.1998 from respondent No.3 for a valid sale consideration of Rs.1,14,500/- and since then they are in possession of the property and have completed the construction by April, 1999. Hence, they claimed that they are bonafide purchasers of the schedule land. They also filed the G.P.A. dated 03.04.1989 executed by respondent No.4 in favour of respondent No.3. As a G.P.A. holder of respondent No.4, respondent No.3 executed the said sale deed in favour of the wife of RW.2. In his evidence, RW.1 clearly deposed that the vendor of the petitioner ie. respondent No.4 gave G.P.A. to sell the property to respondent No.3. The evidence of RW.1 clearly shows that the vendor of the petitioner gave G.P.A. to respondent No.3 to sell the property, who in turn sold away the entire land covered by Ac.2.20 gts. The evidence of RW.2 also shows that he purchased the property from respondent No.3 under Ex.B1. The petitioner failed to produce any documentary evidence

to show her possession, but the respondents 1 and 2 produced Exs.B5 to B8, property tax receipts and electricity bills, to establish their possession and enjoyment of the schedule property.

15) Admittedly, the father of respondent No.3, was a protected tenant of the schedule land and after his demise, respondent No.3 continued to be as protected tenant. If the owner intend to sell the land which is in possession of the protected tenant, he has to obtain written permission from the protected tenant as per law. Hence, in order to create validity of the sale of land, respondent No.4 executed an agreement of sale in favour of respondent No.3 and also executed G.P.A. in his favour. Accordingly, both of them jointly obtained approved layout plan to avoid any technical defects to the sale of the plots, as the third respondent is a protected tenant of the land. Plot No.22 is one such plot covered under G.P.A. Considering the said facts, the Special Court came to a conclusion that respondents 1 and 2 are bonafide purchasers and the petitioner failed to establish her title over the property.

16) Ex.A1 was executed without obtaining written permission to sell the land from the protected tenant under Section 38 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act. Any sale deed without permission of the protected tenant, when the land is in his possession, is invalid in the eye of law. Hence, the Special Court rightly held that Ex.A1 is a nominal sale deed and the same was brought into existence for a wrongful gain.

17) Therefore, the evidence available on record does not suggest that respondents 1 and 2 are land grabbers and the schedule land has been grabbed by them. The petitioner failed to make out a *prima facie* case that the respondents 1 and 2 are land grabbers and have been in unlawful possession of the schedule land.

18) For the aforesaid reasons, in our view, there are no merits in any of the contentions raised by the petitioner. The direction sought by the petitioner in her application filed before the Special Court to take action against the respondents under the provisions of A.P. Land Grabbing (Prohibition) Act, 1982 is unwarranted and the Special Court rightly rejected that application. We see no illegality or any irregularity in the order passed by the Special Court and the writ petition is liable to be dismissed.

19) Accordingly, the writ petition is dismissed. However, there shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

MS. J. UMADEVI, J

13.04.2018
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