

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

Writ Petition No.26022 of 2009

DATED:13-04-2018

Between:

Sultan Mohinuddin, died,
Per legal representatives ... Petitioners

And

The Special Court
Under the A.P. Land Grabbing
(Prohibition) Act, 1982,
Rep. by its Registrar,
BRKR Bhavan, Tank Bund
Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONERS: Mr. G. Vidyasagar,
Senior Counsel,
for Smt. K. Udayasri

COUNSEL FOR RESPONDENT No.1: -

COUNSEL FOR RESPONDENT NOS.2 to 646: Mr. P. Subhash

THE COURT MADE THE FOLLOWING:

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

The twenty-three year old litigation is still hanging fire and the original petitioner, who initiated the litigation, having left this mortal world without enjoying the fruits of success before the Special Court, the baton of litigation is passed on to his legal representatives.

2. The dispute is about a valuable parcel of land admeasuring Acs.31.25 guntas in Sy. Nos.43/1, 44/1 and 45/1 of Kandikal Village, Bandlaguda Mandal, Hyderabad District, which is under illegal occupation of respondent Nos.2 to 646 (hereinafter referred to as "the private respondents"). The original petitioner has succeeded in convincing the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (for short, "the Land Grabbing Prohibition Act"), that the private respondents have grabbed his land. The Special Court has finally disposed of L.G.C. No.126 of 1995 by its order dt.31.12.1997. The result portion of the said order is apt to be reproduced herein below.

"In the result, a decree and judgment is hereby passed in favour of the applicant and as against the respondent Nos.1 to 645 to deliver vacant possession of the application schedule property subject to the result of the appeal preferred by the applicant herein, pending before the Commissioner of Urban Land Ceiling Authority, with regard to the application schedule property. If any excess land in the application schedule property is declared as surplus by the Competent Authority under the Urban Land Ceiling Act and as such

surplus land vests in the Government under the provisions of the Urban Land Ceiling Act, the Government may consider to regularize the said surplus land in accordance with law in favour of those persons who are found to be in possession of the said surplus land in the application schedule property. The claim of the applicant for mesne profits is dismissed. The L.G.C. as against respondent Nos.646, 647 and 648 is dismissed. In the circumstances of the case we direct the parties to bear their own costs. The application is decided accordingly.”

3. The said order in the L.G.C. came be to be challenged in W.P. No.5440 of 1998 by 234 persons among respondent Nos.2 to 646. A Division Bench of this Court, by its judgment dt.15.06.2009 dismissed the writ petition. Later, the original petitioner has filed I.A. No.1001 of 2009 in L.G.C. No.126 of 1995 for a direction to the Revenue Divisional Officer (for short, “the RDO”), Hyderabad to implement the order in L.G.C. No.126 of 1995 and evict the private respondents from the property and deliver the vacant possession of the same to the petitioner. The said application was disposed of by the Special Court on 17.11.2009 whereby it has directed the RDO to handover the vacant possession of the land only to the extent that the petitioner is permitted to hold under the Urban Land (Ceiling and Regulation) Act, 1976 (for short, “the 1976 Act”) Act. This order was challenged in the present writ petition.

4. The petitioner pleaded that the order passed by the Special Court in I.A. No.1001 of 2009 was contrary to the spirit of the order passed in L.G.C. No.126 of 1995, in that, after passing of the said order, the 1976 Act itself was repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short, “the Repeal Act”), which was adopted by the State of Andhra Pradesh, by a Resolution passed by the Andhra Pradesh State Legislature on 27.03.2008, following which G.O. Ms. No.603 (Revenue (UC.I) Department, dt.22.04.2008 and Circular Memo No.17377/ UC.I(1)/2008-1, dt.24.4.2008, were issued. Based on these subsequent events, the petitioner pleaded that as the condition stipulated in clause (a) of the said Memo, dt.24.4.2008, namely, “only cases in which possession of surplus lands taken by Government u/s.10(6) will be saved” is not satisfied in the present case, as, admittedly the Government has not taken the ceiling proceedings beyond the stage of Section 10(1), and has not taken possession of the land, the petitioner is entitled to the benefit of the Repeal Act and the Circular Memo dt.24.4.2008.

5. The Division Bench by its order dt.02.03.2010 while allowing the writ petition, however, refrained from going into the effect of the Repeal Act. It has held that when once the

dispute between the petitioner and the private respondents is adjudicated in favour of the former, he has every right to have the land restored as contemplated under Rule 15 of the A.P. Land Grabbing (Prohibition) Rules, 1988 (for short, “the Rules”) by following the procedure prescribed therein and the Special Court ought not to have gone into the aspect of urban land ceiling, the effect of the initial conclusions arrived at by the competent authority, the pendency of the appeal before the appellate authority and the import of the Repeal Act and the consequences thereof. The Division Bench accordingly set aside order dt.17.11.2009 in I.A. No.1001 of 2009 in L.G.C. No.126 of 1995 and directed the Special Court to follow the procedure prescribed under sub-rule (1) of Rule 15 of the Rules, to enable the competent authority to implement order dt.31.12.1997 in L.G.C. No.126 of 1995.

6. After W.P.No.26022 of 2009 was allowed, the original petitioner filed I.A.No.320 of 2010 before the Special Court once again seeking implementation of the Judgment in L.G.C.No.126 of 1995 as the executing agency i.e., the RDO, was not showing any interest in the execution of the Special Court’s Judgment. By its order dated 23-3-2010, the Special Court allowed the said I.A. and directed the RDO to

implement the Judgment in the L.G.C. On 12-4-2010, the RDO addressed the Deputy Tahsildar, Bandlaguda Mandal, to take possession of the L.G.C. schedule property and deliver possession thereof to the petitioner as per the Special Court's Judgment. At this stage, some of the respondents in the L.G.C. who had not earlier challenged the substantive Judgment dated 31-12-1997 in the L.G.C. filed W.P.Nos.25367, 25562, 26496 and 29518 of 2010 while some of the respondents filed applications seeking review of Judgment dated 2-3-2010 in W.P.No.26022 of 2009. By common order dated 1-12-2010, the Division Bench has dismissed all the cases as withdrawn. While doing so, the Court has recorded that all the learned Counsel appearing for the various review petitioners and for the writ petitioners had filed written authorisations seeking withdrawal of the review petitions and the writ petitions. Thereafter, the RDO vide his notice dt.21-12-2010 addressed the Counsel for the decree holder/petitioner, which reads as under:

“It is informed that Inspector of Police, Kanchanbagh Police Station, through Letter No.407/OW/IKB/2010, dt. 14-12-2010 received on 21-12-2010 at 12.30 p.m., intimated to provide Police Protection on 22-12-2010 at 06.00 hours. In view of order dt.23-7-2010 in I.A.No.320 of 2010 in LGC No.126 of 1995 passed by LG (P) Act Court, counsel for Sultan Mohinuddin is requested to provide following : 1) 40 JCBs, 2) 1000 Labour for removing debris 3) 100 trucks and

4) To bear the cost of deployment of police personnel and estimates will be given separately.”

7. The conditions stipulated by the RDO for execution of the Judgment, impossible as they seemed to the original petitioner, have evidently driven him to approach this Court by filing W.P.No.5711/2011 with the following prayer :

“ to issue writ, order or direction more particularly one in the nature of writ of mandamus to declare the action of the respondents in intentionally causing delay in executing the Court orders passed in I.A.No.320/2010 in L.G.C.No.126 of 1995 on the file of the Special Court, Hyderabad, though the orders were passed on 23-03-2010 as being illegal, arbitrary, violative of Article 300-A of the Constitution of India and consequently direct the respondents herein to forthwith take necessary steps for execution of the said orders”

Initially, the petitioner has impleaded the police and the revenue officials apart from the Special Court as respondent Nos.1 to 4. However, some of the respondents herein have got themselves impleaded as respondent Nos.5 to 20 in the Writ Petition. They were represented by a learned Senior Advocate. On a thorough consideration of the factual matrix and the legal position, a Division Bench vide its Judgment dated 7-4-2011 allowed the said Writ Petition in the following terms :

“In the facts and circumstances of the case and on the analysis above, we direct all the official respondents to execute, duly, faithfully and expeditiously the order of the Special Court dt.31-12-1997 in L.G.C.No.126 of 1995 and within a period of three weeks from the date of receipt of a copy of this order. Having duly considered the contentions urged on behalf of the official respondents and facts of this case and the meandering litigation adverted to above, we fix

the above time frame since this court feels that the decree should be implemented and the fruits of the decree should be enjoyed at least during the life time of the petitioner. The official respondents will co-ordinate their functions by employing appropriate logistics and mobilise the physical and material resources requisite and necessary for effectuating and executing the order dt.31-12-1997 in L.G.C.No.126 of 1995, within the time frame directed herein without fail, demur or further procrastination.”

8. The Division Bench in its Judgment took note of the Judgment dt.15-6-2009 in W.P.No.5440 of 1998 by which it has confirmed the substantive Judgment dt.31-12-1997 in L.G.C.No.126 of 1995 and also the Judgment dt.2-3-2010 passed in the present Writ Petition before remand, the orders passed in the review petitions and the fresh Writ Petitions dismissing them as withdrawn. The Division Bench also conclusively repelled the submissions made by the learned Senior Counsel for the impleaded respondents that in view of order dated 17-11-2009 in I.A.No.1001 of 2009 (impugned in the present Writ Petition) and the fact that the appeal filed against the Special Court's order declaring that the petitioner holds the lands in excess of the ceiling limit, the petitioner is not entitled to recover possession of more than 1000 sq. mtrs. Dealing with the effect of the Repealing Act, the Division Bench has made very significant observations which are apposite to be reproduced hereunder :

“The contention of Sri P. Sri Raghuram that the order of the Special Court dt.31-12-1997 is inexecutable since it is a conditional order and the condition has been rendered invalid on account of the dismissal of the writ petitioner’s appeal by the Appellate Authority under the ULC Act or the contention that notwithstanding the operation of the repealed Act 1999 and the admitted factual scenario of the schedule property not vesting in the State on account of no proceedings have been processed by the State beyond the Section 10(1) stage of the 1976 Act, do not merit acceptance by this Court. Every person living within the territory of India is bound to obey the laws and including judicial pronouncements declaring rights and obligations. The 4th respondent, a consecrated executing agency under the provisions of the 1982 Act and the 1988 Rules thereunder is bound by the provisions of the 1999 Repeal Act and by the legislative dynamics brought about thereunder. **The legislative command and consequences following on the repeal of 1976 Act by the 1999 Repeal Act will have to be duly taken note of and comprehended by the 4th respondent while executing the order of the Special Court dt.31-12-1997 in LGC No.126 of 1995.** The 4th respondent could have been relieved of the obligation to recognise and effectuate the consequences of the 1999 Act since he was a mere executing agency bound by the contours of the Judgment of a duly constituted Court. **There is however nothing, express or implied, in the Judgment of the Special Court dt. 31-12-1997 in L.G.C.No.126 of 1995 which enables on the 4th respondent to treat the petitioner herein as entitled only to the extent of land that he would be entitled under the provisions of the 1976 Act and any orders of the Primary or Appellate Authorities or any orders declining to grant exemption under the provisions of Section 20 thereof.....”**

(emphasis is ours)

The Division Bench also denounced the practice adopted by the Special Court in entertaining the applications for execution and held that Rule 15 of the Rules enjoins that the Special Court or the Tribunal under the Land Grabbing Prohibition Act shall communicate its final decision to the affected parties and to the RDO and that the latter shall on receipt of such

order issue a direction in the specified Form-V deputing any officer not below the rank of Revenue Inspector to take possession of the grabbed land on behalf of the court and deliver the same to the persons ordered by the Special Court after following the procedure in the various contingencies specified in sub-rules (3) to (10) of Rule 15 of the Rules. The Court also termed the provision of logistics such as 1000 labour, 100 trucks, 40 JCBs etc., by the petitioner as without legitimate justification and held as under :

“Neither the learned Government Pleaders for the Revenue or for Home is able to cite any provision of law or any legitimate justification for the 4th respondent’s letter dt.21-12-2010 calling upon the decree-holder/petitioner to provide man-power and funds to perform the non-derogable sovereign obligation consecrated on the 4th respondent as the executing agency, for the due and faithful execution of the orders of the Special Court under the 1982 Act qua the obligation specifically consecrated on the 4th respondent under Rule 15 of the 1988 Rules. The reason for neither the Act nor the Rules providing for the victim of land grabbing having to fund the execution of the decree of the Special Court constituted under the provisions of the 1982 Act, directing the eviction of the land grabbers, is apparent. Qua the provisions of the 1982 Act, the Rule making authority clearly perceived that acts of land grabbing verify a governance deficit of the law and order which enables the illegal conduct of land grabbing. The pronouncement of such illegality and the consequent relief of eviction of land grabbers from the illegally occupied property belonging to another qua the pronouncement of the Tribunal or the Special Court constituted under the provisions of the 1982 Act and the Rules there-under is perceived to be a sovereign function of the State to be executed by the specified State actor namely the Revenue Divisional Officer to restore the equilibrium of the society.”

9. Eleven days after disposal of the said writ petition, respondent Nos.148 and 368 and a third party filed an appeal with Special Leave Petition before the Supreme Court, against order dt.02.03.2010 passed in the present writ petition. A copy of the Special Leave Petition placed before us shows that the petitioners therein have not referred in the S.L.P. to the order dt.07.04.2011_in W.P. No.5711 of 2011. Be that as it may, the Supreme Court has granted leave and disposed of the appeal without expressing any opinion on the merits of the controversy and remanded the case to this Court with a request to decide the matter afresh after hearing all the contesting parties. Accordingly, the present writ petition was got reopened and posted before us for hearing.

10. We have heard Mr. G. Vidyasagar, learned Senior Counsel appearing for the petitioners, and Mr. P. Subhash, learned counsel for the private respondents. After hearing, we have dictated the judgment till the rising of the Court for the day on 09.04.2018 and adjourned the case to the following day, i.e., 10.04.2018. On 10.04.2018, when the case was called, Mr. S. Niranjana Reddy, learned Senior Counsel, submitted that some of the parties who are in occupation of small extents of the land and not parties to the L.G.C. have filed implead

applications in which he has instructions to appear. He has requested for adjourning this case so as to hear those applications. We declined the said request, as any order that may be passed in this writ petition would not bind the third parties. On our expressing this view orally, the learned Senior Counsel did not persist with his request and requested to place this on record. It is for this reason that we are placing on record the above event which transpired in the Court on 10.4.2017, and we have reserved the remainder of the judgment, for being pronounced later.

11. The position that emerges from the detailed narration of the factual and legal aspects in the foregoing paragraphs is as follows.

- (i) The original petitioner succeeded in L.G.C. No.126 of 1995 and secured the judgment to evict the private respondents from the L.G.C. schedule property.
- (ii) W.P. No.5440 of 1998 filed by 234 respondents in the L.G.C. questioning the judgment in the L.G.C. came to be dismissed on 15.06.2009 and the said judgment has attained finality.
- (iii) Order dt.17.11.2009 passed in I.A. No.1001 of 2009 in L.G.C. No.126 of 1995 confining the delivery of possession only upto 1,000 Sq.mts., was challenged in W.P. No.26022 of 2009 (the

present writ petition). This writ petition was allowed by order dt.02.03.2010 whereby the Division Bench has set aside order dt.17.11.2009 in I.A. No.1001 of 2009 with a direction to the Special Court to follow the procedure prescribed in clause (1) of Rule 15 of the Rules.

(iv) W.P. No.5711 of 2011 filed by the original petitioner was allowed directing the respondents to execute the Special Court's order dt.31.12.1997 in L.G.C. No.126 of 1995 within three weeks. This judgment remained unassailed and is holding the field as on the date.

(v) The order in W.P. No.26022 of 2009 was questioned by respondent Nos.148, 368 and a third party by filing an appeal with special leave petition wherein leave was granted and the appeal was disposed of by remanding the case to this Court with a request to decide the same after hearing all the contesting parties.

12. During the hearing, we have enquired with Mr. P. Subhash, learned counsel appearing for the private respondents, including respondent Nos.148 and 368, as to whether the latter have filed counter affidavit after remand of the case by the Supreme Court. Though he has answered in the affirmative, we do not find any counter affidavit on file. The learned counsel was unable to show proof of filing of such counter

affidavit. Even the counsel for the petitioners also stated that they have not received copy of the purported counter affidavit. Therefore, we have no option other than concluding that the three persons at whose instance the case has been remanded by the Supreme Court have not filed any counter affidavit. Indeed, no other respondent has filed any counter affidavit contesting this writ petition.

13. Though order dt.17.11.2009 of the Special Court in I.A. No.1001 of 2009 was not directly under challenge before the Division Bench in W.P. No.5711 of 2011, as some of the encroachers who got impleaded as respondents placed heavy reliance on the said order, the sustainability or otherwise of the same was thoroughly discussed by the Division Bench, as noted hereinbefore, and held that the Special Court failed to take into consideration the Legislative intent in repealing the 1976 Act, while further holding that there is nothing express or implied in the judgment of the Special Court dt.31.12.1997 in L.G.C. No.126 of 1995 which enables the RDO to treat the petitioner as being entitled only to the extent of the land that he would be entitled under the provisions of the 1976 Act. We are in respectful agreement with the said view of the Division Bench. We would, however, supplement our own reasons hereunder.

14. When the Special Court has disposed of L.G.C. No.126 of 1995, the 1976 Act was in force with all its vigour. Under the law then prevailing, if a person holds any land in excess of the ceiling limit, the same, subject to the procedure laid down in the Act would vest in the Government. As the original petitioner's appeal against the order of the Special Officer, holding that the land held by the original petitioner is in excess of the ceiling limit was pending before the Commissioner of Urban Land Ceiling Authority, the Special Court has made the delivery of the land subject to the result of the appeal by making it clear that if any part of the L.G.C. schedule land is declared as surplus by the competent authority, the same would vest in the Government and that in such an event, the Government may consider to regularise the surplus land in accordance with law in favour of the encroachers. This part of the order of the Special Court has completely lost its relevance with the enactment of the Repeal Act and issue of G.O. Ms. No.603, dt.22.04.2008 and the Circular Memo dt.24.04.2008. As rightly held in W.P. No.5711 of 2011, the question of the petitioner being deprived of any part of the L.G.C. schedule property would have arisen had it been vested in the Government. By operation of the Repeal Act, as adopted by

G.O. Ms. No.603, dt.22.4.2008 and Circular Memo dt.24.04.2008, the land the possession of which was admittedly not taken by the Government under Section 10(6) of the 1976 Act, did not vest in the Government. Therefore, in the absence of such vestiture the petitioners continue to hold the land as its lawful owners without any impediment in law, are entitled to take possession in pursuance of the judgment in the L.G.C. and enjoy the same with absolute and uninhibited legal rights. Hence, we have no hesitation to hold that the Special Court has completely misread the judgment in L.G.C. No.126 of 1995 dt.31.12.1997 and failed to comprehend the true legal consequences of the Repeal Act.

15. It is a matter of deep regret that though the original petitioner succeeded before the Special Court in the year 1997 and the said order has attained finality with the dismissal of W.P. No.5440 of 1998 on 15.06.2009, and W.P. Nos.25367, 25562, 26496 and 29518 of 2010 on 01.12.2010, he could not enjoy the fruits of his success during his lifetime (On his demise, the petitioners came on record as his legal heirs). The private respondents herein are thriving on vexatious litigation frustrating the efforts of the successors of the original petitioner. Even now attempts are being made by certain third

parties who have not participated in the legal litigation for more than two decades to thwart the efforts of the petitioners to take possession of the land to which they are legitimately entitled to enjoy. The ingenuity of the encroachers on one side and indifference and lacklustre approach of the executive apparatus on the other side are mocking at the efficacy of the legal system which may eventually drive the litigant public to approach antisocial elements for redressal of their grievances. Such a situation does not augur well for an orderly society. The private respondents, or even third parties for that matter, have no semblance of right to remain in possession of the land in the light of the order of the Special Court conclusively adjudicating the right of the petitioners. The enormity of efforts to flush out the illegal occupants cannot be a constraint in effectuating the judicial order passed by the competent court of law. As held by the Division Bench in W.P. No.5711 of 2011, the magnitude of the operation and the complex task do not absolve the State of its responsibility to carry out the judicial mandate in its letter and spirit. Thus far the State has abdicated its responsibility, which is wholly unjustifiable. The Majesty of Court lies in effectuation of its orders with promptitude and the executive on which this responsibility is consecrated cannot

balk in discharging this function. We hope and trust that the State would at least now rise to the occasion and remedy the grave injustice suffered by the petitioners thus far.

16. On the above analysis, we hold that the impugned order is not sustainable and the same is accordingly set aside. We further hold that as the judgment in W.P. No.5711 of 2011, dt.07.04.2011 has attained finality, the same continues to operate and the petitioners are entitled to take recourse to such legal remedies as are available to them to effectuate the said judgment in order to recover possession of the L.G.C. schedule property.

17. In the result, the writ petition is allowed, subject to the observations made hereinbefore.

As a sequel to disposal of the writ petition, pending miscellaneous applications shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

D.V.S.S. SOMAYAJULU, J

13-04-2018

am/ bnr

Note: LR copies to be marked.

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