

STATE OF A.P.

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v.

HYDERABAD POTTERIES PVT. LTD & ANR.
(Civil Appeal No. 3413 of 2010)

APRIL 19, 2010

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[P. SATHASIVAM AND DEEPAK VERMA, JJ.]

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982:

ss. 8(1) and (10) – Application by State Government for declaring the respondents as land grabbers – HELD: Aggrieved person is prima facie required to prove before Special Court that the land is owned by such person and on such proof, the presumption u/s 10 will be attracted and the burden would shift on the respondent to prove that he had not grabbed the land – In the instant case, the Special Court has rightly recorded a finding that prima facie the appellant-State has failed to establish that the title of the land vests in it or that the respondents are land grabbers thereof – Title – Code of Civil Procedure, 1908 – s.11 – Constructive res judicata.

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Title:

Entries in revenue record – HELD: May not be sufficient as conclusive proof of title nor can the same be relied on for proof of establishing the title as such – Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 – ss. 8(1) and 10.

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Code of Civil Procedure, 1908:

s.11 – Constructive res judicata – Writ petition before High Court arising out of ownership dispute regarding land – Municipal Corporation and State Government arrayed as respondents therein – No plea raised by State that writ petitioners were land grabbers in respect of the said land – Later, State Government filing application u/s 8(1) in respect

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- A of the same land claiming ownership of the said land and seeking declaration that the respondents (writ petitioners in earlier writ petition) were land grabbers of its land – HELD: The proceedings u/s 8(1) initiated by State Government would be barred by constructive res judicata – Andhra Pradesh
 B Land Grabbing (Prohibition) Act, 1982 – ss. 8(1) and (10).

C The State Government filed an application u/s 8(1) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 with a prayer that the respondents be declared as land grabbers in respect of 17, 786.5 sq. mtrs. of land. The respondents opposed the application stating that the land was purchased by them under a registered sale deed dated 31.3.1946 and since then they were in possession thereof. The Special Court dismissed the application. The High Court in the writ petition filed by the State affirmed the order of the Tribunal.
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Dismissing the appeal filed by the State Government, the Court

E HELD: 1.1. Section 10 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 makes it clear that an aggrieved person is prima facie required to prove before the Special Court that the land is owned by such person and on such proof, the presumption that the person alleged had grabbed the land would be against the latter
 F and the burden of proving that the land has not been grabbed by him shall be on such person. [Para 7] [822-B-C]

G 1.2. In the instant case, the sole basis of the appellant-State to claim the land was the entries made in survey records showing that the scheduled property was surveyed and was shown in it as a gap area i.e. un-surveyed area as per the old survey records and as such it could only be declared to be Government land as has
 H been recorded in Column No. 20 of the T.S.L.R. Apart

from the said revenue record and issuance of gazette notification, no other document was filed by the appellant-State to show that the said land belonged to it. It is trite that entry in the revenue record alone may not be sufficient as conclusive proof of title nor can it be relied on for proof of establishing the title as such. [para 20] [826-E-G]

1.3. Looking to the matter in totality and from all angles, it can safely be construed that prima facie the appellant-State failed to establish that the respondents are land grabbers of the land or the title thereof vested in the State. Thus, the Special Court committed no error in drawing presumption in favour of the respondents that they cannot be declared as land grabbers as contemplated u/s 10 of the Act and the prima facie burden which lay on the appellant that the land has been grabbed by the respondents has not at all been discharged. On the other hand, the facts would clearly establish that respondent No.1 purchased the said land from its previous owners whose names had been mutated in the land records and after purchase, respondent No.1's name came to be mutated in the records. Corporation number was allotted to it. It started paying Corporation taxes as well as NALA Tax and electricity dues. Its possession for last more than 60 years had never been disturbed. It had constructed multi-storeyed building on the said land only after obtaining sanction and permission from Municipal Corporation. Thus, the burden which lay on the respondents as contemplated u/s 10 of the Act has fully been discharged. [para 24-25] [827-F-G; 828-A-D]

2. In the earlier writ petition which was filed by the respondents in the High Court, and in which the Municipal Corporation and appellant-State both were parties, the ground of land grabbing was not raised. That writ petition resulted in favour of the respondents. Thus,

A it could not be established even in earlier litigation that
 the land belonged to the State. In fact, the instant
 proceedings initiated by the appellant u/s 8 of the Act,
 would be barred by constructive res judicata as
 envisaged u/s 11 of the Code of Civil Procedure, 1908,
 B even though such a ground was neither taken nor raised
 before this Court by the respondents. [para 25-26] [828-
 D-F]

3. In the considered opinion of the Court, no fault can
 be found either in the judgment and decree of the Special
 C Court or in the judgment and order passed by Division
 Bench of the High Court, in appellant's writ petition. [para
 27] [828-G]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No.
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From the Judgment & Order dated 11.10.2007 of the High
 Court of Judicature, Andhra Pradesh at Hyderabad in Writ
 Petition No. 4432 of 2005.

E I. Venkata Narayana, C.K. Sucharita and T.V. George for
 the Appellant.

Vinod A. Bobde, A.K. Narsimha Rao, Rajendra Kumar, K.
 Ram Kumar, B. Sridhar for (K. Ramkumar & Associates) for
 the Respondents.

F The Judgment of the Court was delivered by

DEEPAK VERMA, J. 1. Leave granted. Arguments heard.
 Record perused.

G 2. On account of illegal and unauthorized grabbing of Urban
 and Urbanized land in various metropolitan cities, State of
 Andhra Pradesh in its wisdom thought it fit and appropriate to
 bring an Act to curb this menace. The Act is known as Andhra
 Pradesh Land Grabbing (Prohibition) Act, 1982 [hereinafter
 shall be referred to as the 'Act'].

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3. Statement of Objects and Reasons discloses that it had come to the notice of Government that there are organised attempts on the part of certain lawless persons operating individually and in groups to grab either by force, or by deceit or otherwise lands belonging to the Government, a local authority, a religious or charitable institution or endowment, including wakf or any other private person. The Government was further of the view that such land grabbers are forming bogus co-operative housing societies or setting up fictitious claims and are indulging in large scale and unprecedented and fraudulent sales of land through unscrupulous real estate dealers or otherwise in favour of certain section of people, resulting in large scale accumulation of unaccounted wealth. It was felt that public order is likely to be adversely affected. Such unlawful activities of land grabbers had to be arrested and curbed by enacting a special law in that regard.

4. Keeping the aforesaid objects and reasons, initially, Andhra Pradesh Land Grabbing (Prohibition) Ordinance, 1982; was promulgated by the Governor on 29.6.1982 as at that time State Legislature was not in session. But subsequently, the aforesaid Act came to be passed by the State Legislature.

5. Section 8 of the said Act deals with procedure and powers of the Special Courts which are to be constituted as required under Section 7 of the Act. A Special Court generally consists of a Chairman and four other members to be appointed by the Government.

6. Section 10 of the Act which deals with burden of proof, which is required to be considered primarily by us in this appeal, is reproduced hereinbelow:-

"Where in any proceedings under this Act, a land is alleged to have been grabbed, and such land is *prima facie* proved to be the land owned by the Government or by a private person the Special Court or as the case may be the Special Tribunal shall presume that the person who is

A alleged to have grabbed the land is a land grabber and the burden of proving that the land has not been grabbed by him shall be on such person”.

B 7. Plain and simple reading of the aforesaid provision would make it abundantly clear that an aggrieved person as contemplated under Section 10 of the Act is *prima facie* required to prove before the Special Court that the land is owned by such person and presumption that such person had grabbed the land would be against him and burden of proving that the land has not been grabbed by him shall be on such person. In the light of aforesaid provisions existing in the Act, we are called upon to examine the correctness, legality and propriety of the judgment and order passed by Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad passed in W.P. No. 4432 of 2005 on 11.10.2007, titled *State of Andhra Pradesh vs. Hyderabad Potteries Pvt. Ltd. and Another*.

Factual matrix of the case lies as under:-

E 8. State of A.P had filed an application under Section 8(1) of the Act before the Special Court, against the Respondents seeking a declaration that they be declared land grabbers in respect of schedule property and consequently to evict them and deliver vacant possession and to further award compensation to the State. The property in question is admeasuring 17, 786.56 square meters of land in T.S. 4/2, Block-B, Ward No. 66 of Bakaram Village, Musheerabad Mandal, Hyderabad District, now said to be in the heart of the city. The case of the Appellant before the Special Court was that in the town survey conducted in respect of Bakaram and Gaganmahal villages in the years 1355 and 1357 faslis equivalent to 1945-1947 respectively and further in the year 1965 and 1971 and on verification of the maps of both villages, it was found that certain extent of area existing between these two villages was left un-surveyed and was not accounted for.

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Consequently, it remained as a gap area. Gap area means un- A
surveyed land and would be deemed to be Government land.

9. According to Appellant, town survey was conducted by B
following due procedure as contemplated under A.P. Survey
and Boundaries Act, 1923; accordingly a notification was
published for fixing up the boundaries. Thereafter, the schedule
property admeasuring 19214 sq. meters of land was recorded
as Government land in Column No. 20 of the Town Survey Land
Register (for short 'T.S.L.R.'). Later on, a gazette notification
dated 17.07.1976 was issued in this regard which remained C
unchallenged by anyone by way of proceedings under Section
14 of A.P. Survey & Boundaries Act, 1923. Thus, the said
survey having attained finality and the lands having been found
in possession of the Respondents, they would be deemed to
be land grabbers.

10. Appellant further contended that sometime in the month D
of December 1998, Respondents without having any right, title
or interest on the said land, yet illegally grabbed the schedule
property to the extent mentioned above and started construction
of multi-storeyed complexes thereon. It was further submitted E
that by creating fictitious and fabricated documents and
obtaining permission from the Municipality, which was earlier
rejected but having challenged the same by the Respondents
in the High Court by filing Writ Petition No. 25727 of 2000, the
same was granted. The Appellant-State, therefore, contended F
that Respondents are the land grabbers; they should be
directed to deliver possession to the Appellant and pay
compensation accordingly.

11. On notices being issued to the Respondents on the G
application filed by the Appellant, they filed counter affidavits
denying each and every allegation levelled against them. They
contended that first Respondent is a Company duly registered
under the Companies Act as on 27.04.1946 and later on, the
nomenclature was changed to that of Hyderabad Potteries Pvt.
Ltd. Initially, Shri S. Rajeshwar Rao and M.K. Mudaliar had H

A purchased an extent of Acs. 4-32 guntas of land in Survey Nos. 118 to 133 of Nampally Village by registered deed of sale executed in their favour on 09.04.1944 by previous original owner and pattedar Shri Haji Mohd Abdul Azeez. Later on, the said two purchasers sold the said land in favour of Respondent B No. 1, Hyderabad Potteries Pvt. Ltd. by registered deed of sale executed on 31.03.1946 showing clear identity of land with boundaries.

C 12. Out of the said property purchased, certain portions were acquired by erstwhile Hyderabad Government in two spells for the purpose of construction of houses known as "Labour Quarters". In the land acquisition proceedings, the award was passed determining the amount of compensation which was carried to civil court for proper determination and further appeals to the High Court but the property purchased D by Respondent No. 1 Company was not acquired. Thereafter, Municipality assigned house numbers for the factory and adjoining premises as 1-1-365 and 1-1-365/A. Later on, the said property was converted for industrial use as per the orders of the Government. On coming into force of A.P. Urban Land E Ceiling Act, 1976, Respondent No. 1 had filed a declaration. After due enquiry, an area admeasuring 1427.44 sq. meters of the said land of Respondent No. 1 was declared as surplus land, which was handed over to Government and possession thereof, was also taken by it. Later, under Section 20(1) of the F Urban Land Ceiling Act, 1976, the State Government on the application of the Respondents, granted exemption on 11.06.1980. However, since the land was not being used for purposes for which exemption was sought and granted, the Government in its wisdom withdrew the said exemption.

G 13. Out of the said extent of land, Respondents have constructed a multi-storeyed complex on a part thereof, after obtaining prior approval and sanction from Municipal Corporation Hyderabad and third party rights have been H created in favour of people, who are occupying the flats, plots

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and living with their families. The Municipality had also assessed the constructions for the purpose of tax, which is being paid regularly apart from payment of electricity and other charges etc. A

14. For purposes of construction of another multi-storeyed complex, they applied for permission on payment of Rs. 50,00,000/- (Rupees fifty lakhs) towards permission fee and other charges. The said permission was refused on 26.08.2000 stating therein that the land is a Government land. Respondents were, therefore, constrained to challenge the same by filing W.P. No. 25727 of 2000 in the High Court of Andhra Pradesh, which came to be allowed on 25.04.2001 directing the Municipality to grant permission for construction of such multi-storeyed complex. In the light of the aforesaid factual scenario, Respondents contended that the stand of the Appellant-State is unsustainable and Respondents are in possession of the said land for more than 60 years, in their own rights as owners thereof, thus, they cannot be declared land grabbers at all. B
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15. On the strength of the pleadings of parties, Special Court was pleased to frame issues, which have been reproduced in the impugned order. E

16. Here, it is pertinent to point out that Section 9 of the Act, gives powers of the Civil Court and Court of Sessions to Special Courts constituted under the Act, in so far as, the same may not be inconsistent with the provisions of this Act. This Section further shows that the Special Court shall be deemed to be a Civil Court and shall have all the powers of a Civil Court. F

17. The parties then went to trial and led evidence. Appellant examined P.W.1, P.W.2 and P.W.3 on its behalf and proved documents A.1 to A.41. Respondents examined R.W.1 on their behalf and proved documents B.1 to B.33. G

18. On consideration of the entire evidence and the material on record produced by both sides, the Special Court H

A by majority view dismissed the application filed by the Appellant-State whereas one of its revenue members gave a differing judgment upholding the claim of the Appellant only on the basis of entries available in T.S.L.R. Due to majority opinion, the suit filed by Appellant came to be dismissed. Appellant-
 B State was thus, constrained to file the aforesaid writ petition being W.P. No.4432 of 2005, under Article 226 of the Constitution of India in the High Court. The Division Bench considered the matter from all angles and came to the conclusion that Appellant had miserably failed to prove that
 C Respondents are land grabbers as contemplated under the provisions of the Act and, therefore, it put its seal of approval on the majority view of the Special Court and dismissed the Appellant's writ petition.

D 19. Feeling aggrieved therefrom, this appeal is preferred before us. We have accordingly heard Shri I. Venkatnarayana, learned Senior Counsel for the Appellant and Shri V.A. Bobde with Shri V. Sekhar, learned Senior Counsel for Respondents, at length and perused the record.

E 20. The sole basis of the Appellant to claim the land was on the strength of entries made in survey records showing that the schedule property was surveyed as T.S. No. 4 /2, Ward No. 66 of Bakaram village having an area of 19214 sq. meters showing it as a gap area i.e. un-surveyed area as per the old
 F survey records and as such it could only be declared to be Government land as has been recorded in Column No. 20 of the T.S.L.R. Apart from the said revenue record and issuance of gazette notification as mentioned hereinabove, no other material document was filed by the Appellant to show that the
 G said land belonged only to Government. It is trite that entry in the revenue record alone may not be sufficient as conclusive proof of title nor can be relied on for proof of establishing the title as such.

H 21. Special Court had considered the admission of P.W.1, one of the witnesses of the Appellant-State, who admitted that

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the schedule land was given Municipal No. 1-1-365 and NALA tax was being collected from Respondent No. 1 and pleaded total ignorance of the various sale deeds filed by Respondents. This witness also admitted with regard to acquisition of lands for construction of labour colonies and passing of the awards. A

22. Considering the evidence of other two witnesses; P.W.2 and P.W.3, Special Court recorded a categorical finding that they had admitted that at the time of conducting the survey in the year 1965-1971 and making of entries in T.S.L.R., no notice was ever served on the Respondents and further admitted that it appears that all through the possession of the land continued with Respondents only. P.W.2 also admitted about grant of municipal number to its owner i.e. Respondent No. 1. B
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23. In the light of the same, the majority members of the Special Court came to the conclusion that certain entries in the T.S.L.R. may not be sufficient proof of possession of the Appellant-State as owner thereof. Copy of the T.S.L.R. has been filed showing the details thereof. In Column No. 20 "G" is mentioned meaning thereby Government, but in Column No. 23 which is Remarks Column, the possession of Respondent No. 1, Hyderabad Potteries Pvt. Ltd. is clearly shown which is in consonance with the stand taken by the Respondents. It is also pertinent to mention here that 'G' was encircled raising doubts about it and then in Column No. 23 name of Respondent no.1 is clearly stated. D
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24. Looking to the matter in totality and from all angles it can safely be construed that *prima facie* Appellant-State failed to establish that Respondents are land grabbers of its land or the title of the land vested with the State. Thus, the Special Court committed no error in drawing presumption in favour of the Respondents that they cannot be declared as land grabbers as contemplated under Section 10 of the Act and the *prima facie* burden which lay on the Appellant that its land has been grabbed by them has not at all been discharged. On the other G
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A hand, on account of various sale deeds, mutation of their names
 in the T.S.L.R., Payment of Taxes and other documents, it was
 fully established that Respondents are the exclusive owner
 thereof. Thus, the burden which lay on the Respondents as
 contemplated under Section 10 of the Act has fully been
 B discharged.

25. The narration of the aforesaid facts would clearly
 establish that Respondent No.1 had purchased the said land
 from its previous owners whose names were already mutated
 in the land records and after purchase, Respondent No.1's
 C name came to be mutated in the records. Corporation number
 was allotted to it. It had started paying Corporation Taxes as
 well as NALA Tax and electricity dues. Its possession for last
 more than 60 years had never been disturbed. It had
 constructed multi-storeyed building only after obtaining sanction
 D and permission from Municipal Corporation. In the earlier Writ
 Petition filed by them in the High Court, Municipal Corporation
 and Appellant-State both were parties, which ultimately resulted
 in favour of the Respondents, no such ground was raised. Thus,
 it could not be established even in earlier litigation that the land
 E belonged to the State.

26. In fact, second proceedings initiated by the Appellant
 under Section 8 of the Act, would be barred by constructive *res*
judicata as envisaged under Section 11 of the Code of Civil
 Procedure, even though such a ground was neither taken nor
 F raised before us by the Respondents. Thus, it is no more
 necessary to further deal with this issue.

27. Thus, in our considered opinion, no fault can be found
 either in the judgment and decree of the Special Court or in
 the judgment and order passed by Division Bench of the High
 G Court, in Appellant's writ petition.

28. Keeping the aforesaid facts in mind, we are of the
 opinion that there is no merit or substance in this appeal. It is
 hereby dismissed with no order as to costs.

H R.P. Appeal dismissed.