

M. DURGA SINGH & ORS.

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v.

YADAGIRI & ORS.

(Civil Appeal No. 5645 of 2006)

APRIL 18, 2018

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**[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]**

*Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 – s.8(1) – Land grabbing – Appellant filing a land grabbing case against respondent under the 1982 Act – Allegation that respondent grabbed about 500 sq yards of land owned by appellants – Dismissal by the Special Court – Appellant had already filed couple of proceedings alleging encroachment and land grabbing before the civil court which were also dismissed – Writ petition against the Special court's order also dismissed – On appeal, held: Appellants themselves approached the civil court and now they cannot submit that they approached the wrong forum – If the appellants believed that the civil court did not have jurisdiction to entertain the suit instituted by them, then the proper course of action would have been to withdraw the suits and proceed under the Act and not to pursue more proceedings – Appellants invited trouble either by pursuing the litigation in the wrong forum or by not approaching the right forum – For this, the appellants are themselves to be blamed and cannot hide behind the veil of a lack of jurisdiction of the civil court – Appellants were given a full-fledged hearing by the Special Court under the Act – Special court held that the appellants failed to establish that they are the owners of the schedule property; that the respondents had trespassed on the suit property without legal entitlement, thus, were land grabbers; and that there is no certainty about the land alleged to have been grabbed by the respondents – Appellants sought to rely upon a report given by the Local Commissioner appointed by the civil court which did not indicate much – Said report was not proved in evidence before the Special Court or even in the Suit – Moreso, the Local Commissioner was not examined with regard to the correctness of the report – Further, if the submission of the appellants that the suits instituted after 1982 are not maintainable, then even the report of the Local Commissioner*

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A *is without jurisdiction – Thus, Special Court fully justified in dismissing the land grabbing case.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5645 of 2006.

B From the Judgment and Order dated 12.12.2002 of the High Court Judicature Andhra Pradesh at Hyderabad in Writ Petition No. 21808 of 1994.

B. H. Marlapally, Sr. Adv., Apoorv Shukla, V. Sriidhar Reddy, Ajit Wagh, Aditya Gaggar, V. N. Raghupathy, M. Kishan Singh, Advs. for the Appellants.

C B. Adinarayana, Sr. Adv., M. Srinivas R. Rao, Arun Devdas, Sharvanth, Goli Ramakrishna, Mrs. Sudha Gupta, V. G. Pragasam, G. Ramakrishna Prasad, Suyodhan Byrapaneni, Ms. Filza Moonis, Bharat J. Joshi, P. Venkat Reddy, Prashant Tyagi (for M/s. Venkat Palwai Law Associates), Advs. for the Respondent.

D The Judgment of the Court was delivered by

**MADAN B. LOKUR, J.** 1. The tenacity and stamina with which the appellants have been litigating for decades must be admired, but nothing else. We will subsequently mention the various proceedings instituted by the appellants which give us this belief.

E 2. The dispute in this appeal pertains to 500 square yards in Survey No.87 of Lingampally Village, Chikkadapally Mandal, Hyderabad District. This area is said to form a part of the total area in Survey No.87 approximating acres 0-34 guntas. The appellants claims to be the owners of the land in question while the respondents are said to be land grabbers who are liable to be evicted.

F 3. Suit No.106 of 1967 was filed by the predecessors-in-interest against the predecessors of the respondents. The litigating parties are referred, for convenience, as appellants and respondents, regardless of who their predecessors in interest were. In this suit, a claim was made for 20 square yards of land from Survey No.87. In the paper book, the extent of land appears at one place to be 33.5 square yards. Be that as it may, the suit was dismissed on merits by the Trial Court on 29<sup>th</sup> March, 1975 and it was held that the appellants had not been able to prove their title to the suit land and the boundaries had not been specifically stated.

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It is important to note that one of the findings given by the Trial Court in the judgment is that the respondents had a house on the land in dispute. A

4. The appellants later filed OS No.1167 of 1975 for removal of encroachment by the respondents on 79.49 square yards of land. This suit was compromised between the parties and disposed of on 18<sup>th</sup> October, 1979. As a result of the compromise, the respondents paid an amount of Rs.5887.50 to the appellants, who gave up all their claims to the land in dispute. B

5. On or about 29<sup>th</sup> June, 1982 the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short, the Act) came into force. Section 8(1) of the Act is important and reads as follows: C

**“8. Procedure and powers of the Special Courts:—**

(1) The Special Court may, either suo motu or on application made by any person, officer or authority take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit;” D

6. Notwithstanding the enactment, the appellants filed OS No.991 of 1987 with respect to 139 square yards said to have been grabbed by the respondents. It was contended before us by learned counsel for the appellants that the suit filed by the appellants themselves was not maintainable in the civil court in view of the provisions of the Act. In any event, the appellants proceeded with the suit which was dismissed in default on 19<sup>th</sup> September, 1991. Thereafter, the appellants filed an application for restoration of the suit but even that application was dismissed. We were informed that a revision petition was also dismissed. E F

7. The appellants then filed OS No.1095 of 1993 claiming that they had an apprehension that the respondents would encroach upon an area of 369 square yards. This suit was dismissed by the Civil Court by a judgment and decree dated 30<sup>th</sup> September, 2002. G

8. It is recorded in the judgment and decree passed by the Civil Court in OS No.1095 of 1993 that the appellants had instituted the following other proceedings:

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A	Criminal complaint CC 754/67 City Magistrate	Uda Singh Vs Malleham		Dismissed on 10.6.68
B	OS 106/67 on the file of IV Asst. Judge, CCC Hyd.	Shambu Singh Vs. Malleham	Permanent injunction area of land 33.5 sq.yds in S.No.87 Chikkadpally	Dismissed with costs 29.3.75
C	A.S.83/75 Appeal	-do-	-do-	Dismissed on 12.10.76
D	O.S.1167/75 on the file of VII Asst. Judge, CCC Hyd.	Uda Singh Vs. Malleham	Possession of land 78.49 sq.yds	Ended in compromise. Suit dismissed on 18.10.79. Possession of defts. Admitted. Existing structure not to be Disturbed.
E	OS 677/80 on the file of IV Asst. Judge, CCC Hyd.	B. Anantha Laxmi And P. Malleham	For perpetual injunction regarding the Open land falling to the north of building of Malleham	Dismissed on 27.10.84
F	OP 227/20 V Addl. Judge, CCC Hyd.	Shambu Singh And Malleham	Recovery of land 128 sq. Ys.	Petition dismissed on 16.3.87
G	OS 991/87 on the file of III Asst. Judge, CCC Hyd.	-do-	Recovery of 139 Sq. Ys. in S.No.87 Lingampally Village	Dismissed on 19.9.91
H	IA 239/92 in OS 991/87		For restoration	Dismissed on 17.9.93

9. We may mention that the record of the appeal before us shows that a couple of other proceedings were also instituted by the appellants confirming their status as chronic litigants.

10. Eventually, the appellants preferred Land Grabbing Case No. 17 of 1993 before the Special Court established under the Act. In this case the contention urged by the appellants was that the respondents had grabbed about 500 square yards of land owned by the appellants in Survey No.87. The proceedings before the Special Court were dismissed by a judgment and order dated 11<sup>th</sup> October, 1994.

11. Thereafter, the appellants preferred a writ petition in the Andhra Pradesh High Court being Writ Petition No.21808 of 1994. This writ petition came to be dismissed by the impugned judgment and order dated 12<sup>th</sup> December, 2002.

12. Learned counsel for the appellants urged before us that the proceedings instituted by the appellants before the civil court after 1982 were not maintainable in view of the provisions of the Act and the decree passed by the civil court was a nullity. Therefore, nothing prohibited the appellants from approaching the Special Court under the Act. Reliance was placed on *Kiran Singh v. Chaman Paswan*<sup>1</sup>. It is not necessary to delve into this issue.

13. We can only say that the appellants themselves approached the civil court and it is now too late for them to contend that they approached the wrong forum. If the appellants honestly believed that the civil court did not have jurisdiction to entertain the suit instituted by them, then the proper course of action would have been to withdraw the suits and proceed under the Act. Instead, as far as OS No. 991 of 1987 is concerned, after the dismissal of the suit for non-prosecution, the appellants preferred an application for restoration which was dismissed as also perhaps a revision petition. At least at that point of time, wisdom should have dawned upon the appellants that the civil court had no jurisdiction in the matter but quite to the contrary, they proceeded with the litigation and later instituted some more proceedings in the civil court.

14. It is quite clear to us that whatever be the position in law, the appellants invited trouble either by pursuing the litigation in the wrong forum or by not approaching the right forum. For this, the appellants have only themselves to blame and cannot hide behind the veil of a lack of jurisdiction of the civil court.

15. That apart, the appellants were given a full-fledged hearing by the Special Court under the Act in which the following issues were framed:

1. Whether the petitioners are the owners of the petition schedule property?
2. Whether the respondents are not land grabbers within the meaning of Act No. 12 of 1982
3. To what relief.

Additional issue framed on 12.09.1994

Whether the judgments operate as *res judicata* and whether the applicants are estopped from contending that they are the owners of the schedule property by virtue of the said judgments?

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<sup>1</sup> (1955) 1 SCR 117

A 16. The Special Court dealt with all these issues and concluded that the appellants had failed to establish that they are the owners of the schedule property and there was no material to establish their ownership. It was also held that the appellants had not been able to show that the respondents had trespassed on the suit property without legal entitlement and were therefore land grabbers within the meaning of the Act.

B 17. What is more serious is that the Special Court concluded that there is no certainty about the land alleged to have been grabbed by the respondents. The location of the land was not clear, the area was not clearly identified, the description of the land was very vague, no measurements of the land were given and the boundaries of the land were also not clear.

C 18. In this regard, our attention was drawn by learned counsel for the respondents to the description of the land allegedly grabbed by the respondents as stated in the plaint filed before the Special Court. The extent of the land is described in the following terms:

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E	11.	Extent	Land grabbed about 500 sq. yards. of land with structures out of the land 34 guntas in Sy. No. 87 of Lingampally Village, Chikkadpally, Hyderabad.
F	12.	Boundaries	North : Petitioner's Land South : Narayanguda Bridge/Main Road East : Respondents House West : Petitioners House
	14.	Whether there are any houses or structures on the land, to whom they belong. How they were secured and market value of the land	There are pucca house constructed by late P. Malleshem, husband of respondent No. 1 and father of respondents Nos. 2 to 5 and also temporary mulgee of respondents Nos. 6 to 13 constructed by the respondents 1 to 5 unauthorisedly and illegally.

G It is submitted by learned counsel for the respondents that in the plaint before the Special Court there is a clear admission by the appellants that the respondents had a construction on the land in question which was also a finding given in Suit No. 106 of 1967.

H 19. Learned counsel for the appellants sought to rely upon a report given by the Local Commissioner appointed by the civil court in O.S No.1095 of 1993. The report of the Local Commissioner is dated 17<sup>th</sup>

October, 1993 and was marked as Exhibit A-42. The report indicates that the respondents are in possession of 607 square yards which is about 5 guntas and the appellants are in possession of 3025 square yards which is about 25 guntas. Essentially, the report of the Local Commissioner does not show anything more than this. We also find that this report was exhibited in Suit No.1095 of 1993 but it was not proved in evidence before the Special Court or even in Suit No.1095 of 1993. The Local Commissioner was not examined with regard to the correctness or otherwise of the report. We also find that exhibit A-42 pertains only to 139 square yards of the land in question and not 500 square yards. This is quite apart from the fact that if the contention of the appellants is that the suits instituted after 1982 are not maintainable, then even the report of the Local Commissioner is without jurisdiction.

20. In view of the above, we have no hesitation in concluding that the Special Court was fully justified in dismissing the land grabbing case filed by the appellants and the High Court was also justified in dismissing the writ petition filed by them. We find absolutely no reason to interfere with the views expressed and accordingly we dismiss the appeal with costs of Rs. 50,000/- on the appellants for taking several courts for a ride through continuous and fruitless litigation spanning several decades.

Nidhi Jain

Appeal dismissed.

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