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Court : Andhra Pradesh

Decided On : Jun-20-2002

Reported in : 2002(5)ALT11

Judge : S.R. Nayak and ;Dalava Subramanyam, JJ.

Acts : Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 - Sections 2 and 8(1); Andhra Pradesh Land Grabbing (Prohibition) Rules - Rule 6

Appeal No. : W.P. Nos. 21588 of 1998 and 25869 of 2000

Appellant : S. Ramaswamy and ors.

Respondent : Special Court Constituted Under the A.P. Land Grabbing (Prohibition) Act and ors.

Advocate for Def. : G.P. for Revenue and ;A. Pulla Reddy, Adv.

Advocate for Pet/Ap. : J. Kanakaiah, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Dalava Subramanyam, J.

1. The petitioners in W.P.No. 21588 of 1998, who are the applicants in L.G.C.No. 113 of 1995 on the file of the Special Court constituted under A.P. Land Grabbing (Prohibition) Act, 1982, Hyderabad (for short 'the Special Court'), filed the writ challenging the judgment of the Special Court in partly allowing the application declaring the right and title of the applicants to an extent of 253 sq. yards in plot No. 29 in S.No. 37 shown in Ex. C-3 and declaring the respondents as land grabbers to that extent and dismissing the application for the rest of the claim.

2. The writ petitioners in W.P.No. 25869 of 2000, who are the respondents 1, 4 to 6 in L.G.C.No. 113 of 1995, filed the writ aggrieved against the judgment in L.G.C.No. 113 of 1995 declaring them as the land grabbers to an extent of 253 sq. yards in plot No. 29 in S.No. 37 as shown in Ex. C-3.

3. Since both the writ petitions are filed aggrieved by the judgment and decree in L.G.C.No. 113 of 1995, both the writ petitions are disposed of by a common judgment.

4. The brief facts leading to the filing of L.G.C.No. 113 of 1995 are as follows:

The writ petitioners in W.P.No. 21588 of 1998 are the applicants in L.G.C.No. 113 of 1995 who filed the application under Section 8(1) of the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') for evicting the respondents from the application schedule property by declaring them as land grabbers and for damages and costs. The petitioners contended that one Smt. Koteswaramma wife of Appaiah purchased an extent of Ac. 3.00 of land in S.Nos. 32 to 34 of Meerpet village. Smt. Shakunthala, sister of Appaiah purchased Ac. 2.667sq. yards in S.Nos. 36 to 38 and Venkatramaiah, co-brother of Appaiah purchased plot Nos. 29, 30 and 31 of Meerpet village of Kapra Municipality. Appaiah got prepared a combined lay out for the entire property purchased by them. The applicants 1 to 3 purchased Plot Nos. 29, 30 and 31 respectively under registered sale deeds dt. 30-4-1968. When the first respondent tried to interfere with the possession of the applicants, they filed O.S.No. 263 of 1992, O.S.No. 369 of 1992 and O.S.No. 326 of 1992 on the file of the Principal District Munsif, Ranga Reddy ' District for

permanent injunction and they obtained ad interim temporary injunction. The respondents 1 to 7 also filed O.S.No. 320 of 1994 on the file of the Principal Subordinate Judge, Ranga Reddy District on, the basis of an alleged agreement of sale dated 26-9-1966 said to have been executed by Smt. Koteswaramma wherein the applicants were not made as parties.

5. The respondents 4 to 6 filed a counter denying the averments contained in the application. It was contended that one Bhanoori Narayana and his sons are the original pattedars of S.Nos. 36 to 39 of Meerpet village. The lands admeasuring 667 sq. yards and Ac. 2.00 of dry and wet land in S.Nos. 36, 37 and 38 were purchased by Smt. Shakunthala from them under registered sale deed. Similarly; Smt. Koteswaramma purchased Ac. 3.00 of land in S.Nos. 32, 33 and 34 from the original pattedars Madduri Shivaiah and others under a registered sale deed. The said Shakunthala sold plots to the applicants. Husband of R-4 purchased four plots under an agreement of sale from Smt. Koteswaramma, which is 1,535 sq. yards. The respondents 4 to 6 have been in possession of the application schedule property continuously from the year 1966 without any interruption and perfected the title by way of adverse possession. They constructed a room which was dismantled by the applicants highhandedly. Smt. Shakunthala had no right and title over plot Nos. 29, 30 and 31 which are in S.No. 33. Smt, Koteswaramma is the real owner for the plots in S.No. 33. Since the respondents have got possession under an agreement of sale from Smt. Koteswaramma, they cannot be termed as land grabbers. Hence the application is liable to be dismissed. 8th respondent is the purchaser from 3rd respondent.

6. On the above said pleadings, the Special Court framed and settled the following issues.

- (1) Whether the petitioners are the owners of the petition schedule land?
- (2) Whether the respondents are land grabbers within the meaning of Section 2(d)r/w(e) of the A.P.Act XII of 1982?
- (3) To what relief?

7. On behalf of the applicants P.Ws. 1 to 8 were examined and Exs. A-1 to A-30 were marked. On behalf of the respondents R.Ws. 1 to 3 were examined and Exs. B-1 and B-2 were marked. Sri. B. Srinivas was appointed as a Commissioner and he was examined as C.W. 1 and through him Exs. C-1 to C-9 and X-1 were marked. After appreciating the oral and documentary evidence, the Special Court came to the conclusion that the applicants proved their right and title to an extent of 253 sq. yards in plot No. 29 in S.No. 37 as shown in Exs. C-3 and C-5 and declared the respondents as land grabbers to that extent only and directed the respondents to deliver the vacant possession of the said property and the claim of the applicants with regard to the other property was dismissed without costs.

8. Aggrieved against the judgment of the Special Court, the applicants in L.G.C. No. 113 of 1995 filed W.P.No. 21588 of 1998 and respondents 1 and 4 to 6 filed W.P. No. 25869 of 2000 challenging the said judgment.

9. Now the following points arise for determination.

(1) Whether the Special Court committed error in coming to the conclusion that the petitioners/ applicants in L.G.C. 113 of 1995 failed to prove the right and title to the entire application schedule property but could prove the title only to an extent of 253 sq. yards in plot No. 29 in S.No. 37, as shown in Ex. C-3, and if so, whether the petitioners in W.P.No. 21588 of 1998 are entitled for issue of Writ of Certiorari?

(2) Whether the Special Court committed error in coming to the conclusion that the writ petitioners/respondents 1 and 4 to 6 failed to prove the right and title to an extent of 253 sq. yards in plot No. 29 in S.No. 37 as shown in Ex. C-3, and if so, whether W.P. No. 25869 of 2000 is liable to be allowed?

Points 1 and 2:- The applicants in L.G.C. 113 of 1995 filed application under Section 8(1) of the Act to declare the respondents as land grabbers and direct them to deliver the possession and also damages. The extent is shown as 1150 sq. yards in plot Nos. 29, 30 and 31 of Mangapuram New Housing Colony, Meerpet village of Kapra Municipality, Ranga Reddy District. Smt. Koteswaramma purchased an extent of Ac. 3.00 of land in S.Nos. 32 to 34 and Smt. Shakunthala purchased Ac. 2.667 sq. yards in S.Nos. 36, 37 and 38 and Venktaramana co-

brother of Appaiah purchased plot Nos. 29, 30 and 31. It is significant to note that a combined lay out was prepared and applicants 1 to 3 purchased plot Nos. 29 to 31 under registered sale deeds dated 30-4-1968. It is the case of the respondents that the property originally belonged to one Bhanoori Narayan and his sons, who are the original pattedars for S.Nos. 36 to 39 of Meerpet village. Smt. Shakunthala purchased S.Nos. 36, 37 and 38 in an extent of 667 sq. yards and Ac. 2.00 dry and wet land. Smt. Koteswaramma purchased Ac. 3.00 of land in S.Nos. 32 to 34. The husband of R-4 purchased four plots from Smt. Koteswaramma in S.Nos. 32 to 34. The sanctioned lay out is known as New Managapuram Housing Colony. The respondents contended that R-4 to R-6 have been in possession and enjoyment of the property from the year 1966 continuously and they perfected their right by adverse possession. They also contended that Smt. Shakunthala had no right or title to the plot Nos. 29, 30 and 31 in S.No. 33; whereas Smt. Koteswaramma was the real owner and therefore they are not the land grabbers. Koteswaramma is the wife of Sri. S. Appaiah who is examined as P.W. 1. Ch. Venkatramana is co-brother of Appaiah. Appaiah got prepared a common lay out and the properties were sold through him. Exs. A-10 to A-12 are the sale deeds attested by P.W. 1 and the applicants 1 to 3 derived their right under the said sale deeds. P.W. 1 though he asserted the said sale transaction, but he could not say in which survey numbers the property was purchased by the third persons and the corresponding survey numbers for the plots 29, 30 and 31. Since Smt. Shakunthala, Koteswaramma and Venkataramana jointly applied for a common lay out, P.W. 1 did not verify the survey numbers. F.W. 2 is an Advocate-Notary who deposed that he attested the affidavit. P.W. 3 is the Revenue Inspector who enquired into the matter and gave a report to the Special Court as contemplated under Rule 6 of the Act. P.W. 3 recorded the statement of P.W. 1 which is Ex. A-5. In view of Exs. A-4 and A-5 recorded by P.W. 3, Ex. B-1 cannot be believed. The Special Court also considered whether the property in question is in S.No. 35 to 38 of Meerpet village or not. A Commissioner was appointed and he submitted a report. He fixed the boundary between S.Nos. 33, 34 and 37 with the help of available tippon measurement and village map. The Commissioner on verification found that plot No. 29 in S.No. 37 to an extent of 253 sq. yards is falling in S.No. 33 and plot No. 64 of S.No. 32. The Special Tribunal discussed the entire

evidence and other material on record and came to the conclusion that an extent of 253 sq. yards forming part of plot No. 29 in S.No. 37 and the remaining area of plot No. 29 along with plot Nos. 30 and 31 fell in S.No. 33. After considering the reports of the surveyor, the Special Court accepted Ex. C-2 report of the Commissioner and the Special Court accepted Ex. C-2 and C-3 and held that an extent of 253 sq. yards forming part of plot No. 29 is in S.No. 37. For the above said reasons, the Special Court held that the first applicant has got title only to the extent of 253 sq. yards in plot No. 29 in S.No. 37 and the Special Court also held that for the remaining portion in plot No. 29 and plot Nos. 30 and 31, the applicant did not acquire title and hence the petition was dismissed. The Special Court discussed the entire evidence available on record and rightly came to the conclusion that the applicants could prove the title only to an extent of 253 sq. yards and the reasons given by the Special Court are well founded and the Special Court has not committed any error or illegality.

10. Learned Advocate appearing for the writ petitioners contended that the evidence of P.W. 1 cannot be relied. The statement of P.W. 1 was recorded by the Commissioner when he inspected the site. His statement was also attested by an Advocate-Notary, who is examined as P.W. 2. P.W. 2 is an Advocate and he advised (sic. deposed) that he is acting as Notary for the last 12 years and when Ex. A-4 was brought to him he read over the contents to P.W.1 and P.W. 1 having admitted the same to be true, attested the affidavit Ex. A-4. P.W. 3 is the Revenue Inspector who recorded the statement of P.W. 1 which is Ex. A-5. In view of the fact that P.W. 2 and P.W. 3 are independent and impartial witnesses, Ex. A-4 and A-5 are reliable and in the light of the said documents, the evidence of P.W. 1 so far as Ex. B-I is concerned was not believed by the Special Court. The Special Court discussed the execution of Ex. B-I and came to the conclusion that the said document is a fabricated document. In earlier proceedings, the respondents never referred to Ex. B-I. Though it is an alleged agreement of sale, the said document was not filed and it came to the light only after 28 years. No convincing reasons are given as to why sale deed was not obtained in pursuance of agreement of sale. Though Appaiah is an attestor to the sale deeds, he did not produce Ex. B-I agreement. The Special Court gave convincing reasons to come to the conclusion that Ex.B-I is a fabricated document. For the above said reasons, the Special

Court has not committed any error in coming to the conclusion that Ex. B-I is a fabricated document. The report of Deputy Inspector of Survey is very clear and the Special Court relied on the said report and rightly came to the conclusion.

11. Learned Advocate for the writ petitioners in W.P.No. 21588 of 1998 argued that in view of the fact that the petitioners have been in possession and enjoyment of the property for more than statutory period, the Special Court ought to have come to the conclusion that the applicants perfected their right by adverse possession. We have gone through the application filed by the petitioners. The petitioners pleaded that they have got right and title to the application schedule property and they never pleaded adverse possession. The plea of adverse possession must be pleaded and established. The applicants did not plead the adverse possession and there is no evidence in that regard. For the above said reasons, the Special Court has not committed any error or illegality so as to justify the interference by this Court. There are no merits in the writ petition and hence both the writ petitions are liable to be dismissed.

12. In the result, W.P.No. 21588 of 1998 and W.P.No. 25869 of 2000 are dismissed. In the circumstances no order as to costs.

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