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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs. ... Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc. ... Respondents

AND
OTHER CONNECTED CIVIL APPEALS

NOTE AND CASELAWS ON ILLEGAL ACTS CANNOT BE THE FOUNDATION OF RIGHTS

BY

DR. RAJEEV DHAVAN, SENIOR ADVOCATE

(PLEASE SEE INDEX INSIDE)

ADVOCATE-ON-RECORD: EJAZ MAQBOOL

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ILLEGAL ACTS CANNOT BE THE FOUNDATION OF RIGHTS

1. It is respectfully submitted that no right (possession, ownership, prayer) can be claimed if it was founded on an illegality in which the claimant was or was not complicit.

2. As far as the Nirmohi Akhara is concerned, it has been already submitted on the basis of exhibits that the trespass of 22-23 December 1949 was based on planning. This pre-planned desecration of the mosque is evident from the following events:

- **19.03.1949** — A deed which reduced into writing the customs of Nirmohi Akhara was executed by the Panches of Nirmohi Akhara and was registered in Sub Registrar's Office.
- **12.11.1949** — A police picket was posted near the grave mounds (precincts *of Babri Masjid*).
- **29.11.1949** — The Superintendent of Police, Faizabad, Mr. Kripal Singh informed the Deputy Commissioner Shri KK Nayar that "*…there is a strong rumour that on puranmashi the Hindus will try to force entry into the Babri Masjid with the object of installing a diety…*"
- **10.12.1949** — Waqf Inspector submitted his Report recording that Muslims were harassed by Hindus and Sikhs when they went to pray in the Babri Masjid. It was also stated that there was a temple of the Hindus outside the courtyard, where many Hindus lived and abused any Muslims who go to the Masjid.

- **16.12.1949** Letter of Shri KK Nayar (Deputy Commissioner & D.M.) mentioning that Muslims who go to the mosque pass in front of the temple and are frequently being troubled over the occasional failure of the Muslims to take off their shoes. He requested the State Government to not give credence to the apprehensions of the Muslims regarding safety of the Babri mosque.
- **22/23.12.1949** Some members of the Hindu Community in the darkness of night surreptitiously placed idols inside the Babri Masjid.

  FIR No. 167 was filed alleging about the placement of idols inside the inner courtyard of disputed site in the night of 22/23/12.1949 u/s 147, 295, 448 I.P.C by the Hindu Parties
- **27.12.1949** Despite directions, the Deputy Commissioner refused to follow directions.

These have been elaborated in an earlier submission.

3. The Nirmohi Akhara seeks refuge, in asserting that the events of 22-23rd December 1949 did not occur. It noted the destruction of the Babri Masjid on 6th December 1992, but, correctly does not claim any relief based on those events.

4. The relevant cases are:

   i. ***Radha Raman Jew and Ors. vs. Shaligram Subha Karan Kemani and Ors, AIR 2001 Cal 78***

   "36. Moreover, the decree holder plaintiffs did not create any relationship of thika tenancy nor inducted any person in so-called

bustee land as occupant thereof. It appears from the records this alleged thika tenancy right if at all was created by the lessee, Khemani who in his turn got right, title and interest on the strength of the said lease which had been determined before institution of the suit and long before the Act 1981 came into operation. The alleged creation of thika tenancy by Khemani or by Manbhawati Devi is wholly unauthorized and illegal, as none of them had any right or authority. They are at the highest trespasser. Such illegal and unauthorized act of a trespasser does not bind the lawful owner who had obtained a decree. It is surprising two trespassers without concurrence and consent of the owner decree holder could do as above to jeopardize and/ or affect their interest. Under the decree read with the lease the Khemanies were supposed to quit and make over peaceful possession to the decree holder along with the structure which was then built and constructed, instead resorting to abuse of the process of the Court the judgment debtor and/or persons claiming interest through them have been setting up wholly untenable title of thika tenancy.

49. ... In this case the petitioner is claiming to be tenant/Bharatia in respect of one shop room under Manbhawati Devi who was alleged to be a thika tenant at premises No. 7, Singhi Dutta Lane. In support of her claim she has annexed few rent receipts and an agreement dated 16th August, 1990.

50. The case made out by the petitioner in this application on the face of it is not tenable inasmuch as this alleged creation of tenancy right by Manbhawati Devi is a subsequent event after passing the eviction decree. Manbhawati Devi was claiming right through Khemani on the strength of the declaratory decree and Khemani in

his turn has right in terms of lease which determined long ago and followed by eviction decree. This creation of tenancy without consent, permission and knowledge of the decree holder is wholly invalid and illegal. Subsequent transaction by any person after passing of eviction decree is absolutely null and void."

ii. ***Mandal Revenue Officer vs. Goundla Venkaiah and Ors., (2010) 2 SCC 461***

"31. In Mahalaxmi Motors Ltd. v. Mandal Revenue Officer [(2007) 11 SCC 714] yet another Bench of two Judges held that a mere allegation of land grabbing is sufficient to invoke the jurisdiction of the Special Court and that civil court's jurisdiction is ousted in all matters which fall within the jurisdiction of the Special Court. The Bench referred to judgments in Konda Lakshmana Bapuji v. Govt. of A.P. [(2002) 3 SCC 258], Gouni Satya Reddi v. Govt. of A.P. [(2004) 7 SCC 398] and observed: (Mahalaxmi Motors case [(2007) 11 SCC 714], SCC pp. 732-33, paras 38 & 42-44)

"38. Lawful entitlement on the part of a party to possess the land being the determinative factor, it is axiomatic that so long as the land grabber would not be able to show his legal entitlement to hold the land, the jurisdiction of the Special Court cannot be held to be ousted.

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42. The Bench in Konda Lakshmana Bapuji [(2002) 3 SCC 258] has applied both the broader and narrow meanings of the said expression. It would not, however, mean that all the tests laid down therein are required to be satisfied in their letter and spirit. What is necessary to be proved is the substance of the allegation. The proof of intention on

the part of a person being his state of mind, the ingredients of the provisions must be considered keeping in view the materials on records as also circumstances attending thereto. What would be germane for lawful entitlement to remain in possession would be that if the proceedee proves that he had bona fide claim over the land, in which event, it would be for him to establish the same.

43. In Konda Lakshmana Bapuji [(2002) 3 SCC 258] this Court has categorically held that the requisite intention can be inferred by necessary implication from the averments made in the petition, the written statement and the depositions of witnesses, like any other fact. The question which must, therefore, have to be posed and answered having regard to the claim of the land grabber would be that, if on the face of his claim it would appear that he not only had no title, but claimed his possession only on the basis thereof, the same must be held to be illegal. The question in regard to lawful entitlement of the proceedee, therefore, for invoking the charging section plays an important and significant role.

44. We would like to add that the person's purported belief that he is legally entitled to hold the land and his possession is not otherwise illegal must also be judged not only from the point of time when he entered into the possession or when he had acquired the purported title but also from the point of view as to whether by reason of determination of such a question by a competent court of law, he has been found to have no title and consequently continuance of his possession becomes illegal. If the proceedee against whom a proceeding has been initiated under the provisions of the said Act is entitled to raise the question of adverse possession, which being based on knowledge of a lawful title and declaration of the hostile

title on the part of the person in possession, there does not appear to be any reason as to why knowledge of defect in his title and consequently his possession becoming unlawful to his own knowledge would not come within the purview of the term 'land grabbing' as contained in Section 2(e) of the Act. The provisions of the Act must be construed so as to enable the tribunal to give effect thereto. It cannot be construed in a pedantic manner which if taken to its logical corollary would make the provisions wholly unworkable. Only because a person has entered into possession of a land on the basis of a purported registered sale deed, the same by itself, in our considered opinion, would not be sufficient to come to the conclusion that he had not entered over the land unauthorisedly, unfairly, or greedily."

32. From the above-extracted observations made in Mahalaxmi Motors Ltd. v. Mandal Revenue Officer [(2007) 11 SCC 714] , it is clear that the Bench unequivocally approved the ratio of Konda Lakshmana Bapuji v. Govt. of A.P. [(2002) 3 SCC 258] and though not stated in so many words, it did not agree with the ratio of the judgment in Gouni Satya Reddi v. Govt. of A.P. [(2004) 7 SCC 398] which was decided without noticing the earlier judgment in Konda Lakshmana Bapuji v. Govt. of A.P. [(2002) 3 SCC 258]"

iii. ***Neur v. Additional Collector and Ors., 2012 (6) ADJ 117***

"20. In case Badri was in possession illegally without any legal right and admittedly not being a co-sharer then such possession could not be adverse to the petitioners who claim to be owners since the legal right over the land in question was devolving upon the petitioners from their father Dulam. In the event Badri's possession

was illegal without any right or title then it was not hostile to the petitioners hence he could not develop rights by adverse possession. Clearly in the present case Badri was recorded in possession of the land in question in 1360 Fasli for the first time and never before. This entry came after the date of vesting. How it came has not been proved by producing any evidence.

26. In the present case Badri had no interest in the land in question prior to 1360 Fasli. In 1360 Fasli the name of Dulam the father of the petitioners was recorded in the revenue record. Badri got his name mutated on the strength of some order passed by the Supervisor Kanungo. Such order is not available on record. It was never produced. Hence the very basis of the entry does not exist. Under such circumstances the entry of Badri's name in the revenue record was a forged entry without any order in accordance with law. Therefore, his claim to be in possession was to be an unauthorised claim having no legal backing. When he came into possession unauthorisedly he was not in possession under any agreement or right. In the case of Bharit (supra), Kalika Prasad (supra) and Smt. Jannat (supra) they all obtained possession by virtue of a transaction and then continued in possession even though the transaction did not materialize or fruitify. Hence their possession became hostile and they got the benefit of being in adverse possession. Badri on the other hand never came in possession by virtue of any transaction or settlement. He claimed possession on the basis of a forged entry in the revenue record. The decision in the case of Smt. Sonawati has clearly held that even an entry recorded under U.P. Act No. 31 of 1952 has to be lawful and there must be a legal right vested in the person to be in possession. In Mukesh Kumar (supra) the Supreme Court held that when a person is

in illegal possession such illegal possession cannot be converted into a legal title. In Ghasitey (supra) it was held that an unlawful entry cannot give bhumidhari rights.

27. Therefore when Badri's possession was based on an illegal entry in the revenue records and even the basis of that entry was not brought out or proved then it was a forged entry. His possession thereafter was illegal hence he could not mature rights by adverse possession. He never came in possession of the land under any transaction or agreement with anybody hence there was no question of his possession being hostile to the true owner.

28. Clearly Badri was not entitled to claim Sirdari rights on the basis of his claim of adverse possession. The possession of Badri was not hostile. It is therefore held that Badri could not claim Sirdari rights on the basis of his claim of being in adverse possession."

iv. ***Virendra Kumar Dixit vs. State of U.P., 2014 (9) ADJ 506***

"20. ... Thus, the case of the Lucknow Development Authority that boundary wall was an encroachment over the acquired land of Village Mohibullapur, is not based on any fact, and is liable to be thrown out, and the petitioners are entitle to damages on account of pecuniary loss or injury; harassment; mental agony or oppression meted to them by the illegal action of the Lucknow Development Authority, and also are entitled to a writ in the nature of Mandamus directing opposite parties not to interfere in the peaceful possession of the petitioners ...

22. Reverting to the facts of the present case, we may notice that the petitioners are pursuing their case, and fighting for their rights, since more than nine years, and during this protracted period, they have

suffered not only financial loss, but also mental pain and agony on account of illegal action of the Lucknow Development Authority. Hence, the petitioners also seem to be entitled for interest."

v. ***Sureshbhai Ratilal Tanna v. State of Gujarat and Anr, MANU/GJ/1049/2006***

"12.6 Therefore, a person who illegally takes possession of any lands not belonging to himself but belonging to Government, local authority or any other person or enters into or creates illegal tenancies or leave and licence agreements or any other agreement in respect of such lands or who constructs unauthorised structures thereon or enters into agreement for sale or gives on hire or gives such lands or structures to any person on rental or leave or licence basis for construction or for use and occupation of unauthorized structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for construction of unauthorised structures thereon or who collects or attempts to collect from any occupiers of such lands rent, compensation, or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to lawful procedure or who abets in any manner the doing of any of the above mentioned acts or things is a property grabber."

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2001 SCC OnLine Cal 51 : AIR 2001 Cal 78 : (2001) 3 Cal LT 202

BEFORE K.J. SENGUPTA, J.

Radha Raman Jew and others ... Plaintiffs;

Versus

Shaligram Subha Karan Khemani and another ... Defendants.

C.S. No. 2928 of 1954 and G.A. Nos. 1751 of 1998, 2499, 3192, 3782, 3829 of 1999 And Tender No. 1469 of 1999 etc. etc.

Decided on February 8, 2001

ORDER

1. This is a tale of fate of a decree holder who was successful in obtaining a decree for khas possession dated 3rd December 1964 which had reached its finality on dismissal of the appeal preferred therefrom, for default and no restoration and/or readmission thereof was attempted to be made. The decree was put into execution and the same was resisted unsuccessfully by the judgment debtors right up to Supreme Court, however, last attempt was made by the judgment debtors seeking to review of the Division Bench judgment and order of execution. However, it appears that they have lost all interest now. Having found the judgment debtors to be unsuccessful then came and still comes the turn of the occupants who were alleged to have been brought in by the judgment debtors and or sub-tenant to challenge executability of the decree. Some of the objectors herein had tried previously to resist execution of the decree setting up a plea of adverse possession unsuccessfully right up to appeal Court. It also appears that some of the occupants have been evicted in the process of execution but some of them have still been left out. So they have come to resist execution setting up their independent right in order to get a declaration of the instatnt decree being non-executable.

2. To appreciate the case of the above applications short history needs to be stated.

3. The plaintiffs decree holder field the eviction suit against the defendants who were the successor in interest of original lessees in respect of the premises Nos. 23/1 and 23/2 Darpanarayan Tagore Street and premises No. 7 Ganpat Bagla Lane now known as Ganpat Bagla Road. The lease dated 21st February 1941 was for 60 years on and from 15th January 1941, however, the lease was determined before expiry followed by suit and decree.

4. It appears that in terms of the Lease Deed the lessees therein viz., one Subha Karan Khemani since deceased and Janki Das Khemani were entitled to create sublease and sub-tenancy. One of the original lessees was carrying on business under the name and style of Imperial Trading Company and inducted various persons to occupy the demarcated portion of the land and structure. It appears from the Lease Deed that demise premises comprised of land partly with building and structure and partly vacant. At one point of time one Manbhawati Devi was occupying some portion of the land through her predecessor-in-interest, viz., her husband as a thika tenant under Shaligram Subha Karan Khemani in respect of two plots of land in the said premises and got a declaratory decree of tenancy in her favour on 24th February 1965 against the aforesaid lessee and some other persons. This decree was put into execution on 9th June 1966 and an order was passed thereon directing the Sheriff to put the plaintiff decree holder in vacant possession. Before this execution application could be disposed of the plaintiff decree holder/shebait died. The deity through next friend appointed by the Court, withdrew the said execution application with liberty to file fresh one. The fresh execution application, however, was dismissed by an order

dated 19th July 1977.

5. The decree holder (Deity) preferred an appeal being No. 546 of 1977 against the aforesaid order of dismissal dated 19th July 1977 and the aforesaid appeal being No. 546 of 1977 was allowed by the Division Bench on 16th May 1986. An S.L.P. was preferred against the aforesaid judgment and order of the appellate Court allowing the execution application. However, the S.L.P. was dismissed. After dismissal of the aforesaid S.L.P. a review application against the order of Appellate Court dated 16th May 1986 was made. Since then review application has been pending without any order of stay of execution being granted. There are other proceedings including a suit initiated by various persons aiming at to stall the execution proceedings but the same do not exist now, however, the same are not much of importance.

6. In or about July 1993 pursuant to the order passed by the appellate Court on execution, an application was taken out for police help. The said application for police help was allowed by Justice Mrs. Pal (as His Lordship then was) by judgment and order dated 28th February 1994 after deciding the question of adverse possession raised by a group of occupants who have also along with another group come again with a different

pleas of thika tenant, bharatia, sub-tenant, tenant and occupant as bustee land. An appeal was preferred against order of police help dated 28th February 1994.

7. Manbhawati Devi who was one of the occupants claiming herself to be a thika tenant on or about 8th August 1997 filed an application being G.A. No. 3015 of 1997 praying for stay of execution of the decree dated 3rd December 1964 against her but the application was dismissed. An appeal was preferred against the order of dismissal of Manbhawati's application (G.A. No. 3015 of 1997). The appellate Court passed an order restraining the plaintiffs from interfering with the two plots of land under Manbhawati Devi. Subsequently Manbhawati had gone out of the picture after having filed a compromise in the executing Court not to press her claim of thika tenancy.

8. Thereafter on or about 12th May 1998 the aforesaid application being G.A. No. 1751 of 1998 was taken out challenging maintainability of the execution of the decree dated 3rd December 1964. The appropriate interim order was passed thereon. The aforesaid execution application being G.A. No. 1751 of 1998 was once finally disposed of by the learned executing Court directing the Thika Controller to decide and adjudicate the right, title and interest of the applicants in the said premises. However, the appeal Court on 25th August 1998 set aside the judgment and order dated 21st July 1998 of the learned executing Court and remanded the matter to decide the question of independent claim of right, title and interest of the applicants in G.A. No. 1751 of 1998.

9. In the aforesaid batch of applications for resisting execution of the decree question of challenge are almost same, viz., they are the thika tenants and/or bharatias and/or the occupants of bustee on khas land as such they are proctected under the Act, viz., Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981 as amended by the Amending Act 21 of 1993. They are not liable to be evicted as the decree has become invalid by operation of statute. The land or premises in question now stands vested in State of West Bengal.

10. The learned Advocates are appearing and representing other aforesaid applications separately, but they have adopted the argument advanced by Mr. A.K. Mitra, learned Senior Advocate who is appearing in support of the application being

G.A. No. 1751 of 1998.

11. In his written notes of arguments Mr. Mitra contends that premises No. 7 Ganpat Bagla Road is a bustee on khas land as it will appear from the Deed of Lease dated 21st February 1941 in its paragraph 6 annexed to the plaint as well as the schedule of the lease and plaint. The plaintiffs obtained decree for eviction on the basis of the aforesaid Deed of Lease and averment made in paragraph 3(1) of the plaint that such land is a bustee land. In the tabular statement for execution of decree affirmed on 9th March 1966 the land was described by the plaintiff as bustee land. An order dated 9th June 1966 was drawn up on that basis. In the application for execution affirmed on 28th February 1977 the land was described as bustee land. The land which was leased out admittedly is a bustee land but the structures thereof did not belong to the lessor. He contends in view of the commencement of the aforesaid Act with the Amending Act 1993 which has got its retrospective effect 18th January, 1982 the land comprised in and appurtenant to bustees has been included under S. 5 of the said Act. So on and from 18th January 1982 this land has vested to State West Bengal. He contends that in view of S. 4 of the aforesaid Act the provision thereof has got overriding effect even over the decree which has been passed hereunder. Therefore, the plaintiffs decree holders have no right to evict the applicants. In support of his contention he has relied on decisions of Supreme Court reported in (1976) 1 SCC 115 : (AIR 1975 SC 2295) and AIR 1975 Patna 164.

12. He contends that decree validly obtained by the owner of the land becomes incapable of execution if by reason of subsequent change of law, the plaintiff owner is divested of the ownership and the ownership vests in the State.

13. He also contends that under S. 6 read with S. 3(8) of the said Act his clients are not liable to be evicted, as they have become thika tenants and/or occupants of bustee land. They can be evicted under the aforesaid provision by the State of West Bengal as they have become direct tenants under said the Act. According to him this right of the applicant is independent right and it has to

be examined by me on this application.

14. He contends that the question of constructive res judicata or limitation will not apply in this case. It is a question of execution, discharge and satisfaction of the decree. He contends that if a new point of law was not raised nor there was any scope or opportunity to raise in previous proceedings between the same parties such question can be raised subsequently and the rule of res judicata will not be applicable, particularly, in this case previously before Justice Ruma Pal on the application for police help there was no occasion to raise this point as Justice Mrs. Pal delivered the judgment on 24th February, 1994 whereas the amendment took place on 15th March, 1994 with retrospective effect. Therefore, it will not be as constructive res judicata.

15. Mr. Mitra contends the question of limitation does not apply in this case as under S. 22 of the Limitation Act in case of continuing tort a period of limitation begins to run on every moment of time during which tort may continue. In this connection he seeks to rely on a decision of Allahabad High Court reported in AIR 1914 All 531.

16. He contends that even the limitation will start running from the date of dispossession of a party disputing the right of decree holder to execute the decree and this has to be done within 30 days of the date of dispossession. He contends when the Code provides for taking action even after dispossession within a certain limited time in this case question of limitation does not arise, as the applicants have not yet been

dispossessed.

17. In the recent judgment of the Supreme Court reported in (1995) 1 SCC 6 : (AIR 1995 SC 358) and 1973 SCC 694 (sic) this kind of application can be made by the occupants of the suit property even before dispossession.

18. He contends present application is a combined application under S. 47 and Order 21 Rule 97 of the Code of Civil Procedure. This application has also been treated as an application under Order 21 Rule 97 by the Division Bench who remanded the application to the executing Court. Even factually this application cannot be treated to be barred as no effective step was taken for eviction by the Sheriff until the Police help pursuant to my order as threatened to dispossess. Under S. 8(2) of the Thika Tenancy Act, 1981 even land belonging to Debutter estates vests in the State and the only right of the deity to apply for annuity. The Hon'ble Supreme Court has merely granted liberty to the writ petitioners relating to Debutter estates to apply before the Hon'ble High Court for annuity.

19. Learned Advocate appearing in the matter being G.A. No. 3541 of 1999 apart from adopting the argument of Mr. Mitra contends that in view of provision of sub-sec. 1(a) and 4 of S. 3 read with Ss. 4 and 5 of the Act of 1981 the suit land being bustee land on which structure admittedly constructed by the tenants along with interest of the landlord as defined under S. 5 has vested to the State free from all encumbrances.

20. This is the sum and substance of legal basis of the respective cases of the applicants.

21. Mr. Das, learned Senior Advocate while opposing this application has firstly taken the point of limitation in this case, as the right to apply before this Court arose on or about 15th July and/or 18th August 1987 and finally in the year 1992 when threats of dispossession was held out. So applying the provision of Article 137 of the Limitation Act being the residuary Article and read with S. 9 of the Limitation Act all these applications have become time barred. He contends S. 22 of the Limitation Act has no manner of application since it is not a continuing breach. In support of his contention on the question of limitation he has relied on decisions reported in (1984) 89 Cal WN 56 and AIR 1982 Cal. 178.

22. He contends the points raised by the applicants are hit by the principle of res judicata and/or constructive res judicata as on earlier occasion the aforesaid applicants could have raised the aforesaid points before Justice Ruma Pal when the same set of applicants had advanced the case of adverse possession.

23. His further contention is that the provision of Thika Tenancy Act, 1981 has no manner of application. The land in question is not a bustee land nor it was demised to any thika tenant and, the Corporation records will establish this fact that it is not a bustee land. According to him under provision of Calcutta Municipal Corporation Act. 1980 and previous Municipal Act the Corporation

is a final authority to decide the character of the land. The applicants all the time have claimed to be tenant and/or sub-tenant under the Khemanis who were the lessees and/or Manbhawati Devi. Previously the same applicants set up a plea of a adverse possession and this time the aforesaid case of thika tenancy and/or occupancy under the bustee lands have been sought to be raised. This inconsistent case smacks of falsehood of the applicants resorted to by them to frustrate the decree. This process is sheer abuse of the Court and the Supreme Court in its judgment reported in (1994) 1 SCC 1 : (AIR 1994 SC 853) has not allowed the litigants to resort to falsehood before the Court of law. Therefore, mere use of word bustee in the lease 1941 is of no

consequence. Even going by the admitted documents and case of the obstructionists the alleged thika tenancy right is sought to be established after the aforesaid Act came into operation. It has been held by the learned Single Judge of this Court reported in (1998) 2 Cal. LJ 463 : (1999 AIHC 409) that the Thika Tenancy Act of 1981 has no application if such right is sought to be established after the aforesaid Act came into force.

24. He also contends that any objection as to the execution cannot be allowed to be taken by a person who came into the premises after the suit was filed on the principle of rule of lis pendens under S. 52 of the Transfer of Property Act. In this connection he has relied on a decision of Superme Court reported in AIR 1998 SC 1754.

25. So far the decree obtained by Manbhawati Devi in her suit is concerned the same is not binding upon the plaintiffs decree holder herein as they were not the parties there to.

26. Having heard the respective contentions of the learned Advocates on the aforesaid proposition of law I shall decide the following issues, which will broadly cover all the cases.

1. Whether the applications made by the aforesaid applicants are barred by limition or not.
2. Whether the contention of right of thika tenancy is tenable and protection against eviction are available under the provision of Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981 or not.
3. Whether these points can be allowed to raise on this application, in other words, the aforesaid issues are hit by the principle of contructive res judicata or not.
4. Whether on the facts and circumstances of this case these lands have vested unto State of West Bengal or not.

27. I shall decide the question of limitation first. Mr. Das contends that the right of making this application had accrued in 1995 when the Police went to dispossess them. So from 1995 till 1998 these applications are hopelessly barred applying the provision of Article 137 of the Limitation Act. I am unable to accept this submission in view of the fact a third party can maintain an action for restoration of possession within 30 days (Article 128 of Limitation Act) even after dispossession under Order 21 Rule 99 of the Code of Civil Procedure. So limitation in my view does not run from the date of threat of dispossession though the Supreme Court as well as various High Courts including this Court have held that third party can come even before actual dispossession the moment the threat of dispossession is held out. Because of the pronouncement of law Courts on the right of making application of this nature in anticipation the time given under Limitation Act can neither be abridged nor accrual of cause of action be advanced for the purpose of limitation. It is optional for the person aggrieved to come to executing Court within thirty days from date of actual dispossession or to come in advance before dispossession. Admittedly the applicants herein have not been dispossessed physically, so the applications cannot be barred under the Limitation Act. Under such circumstances I cannot accept the argument of Mr. Dasand I uphold the contention of Mr. Mitra. Therefore, the decisions cited by Mr. Das reported in (1984) 89 Cal WN 56 and AIR 1982 Cal 178 on this point are not at all applicable for the reasons as below.

28. (1984) 89 Cal. WN 56 : The decision of learned single Judge was rendered applying Article 137 of the Limitation Act in objection under S. 47 of the Code by judgment debtor on question of execution, satisfaction and discharge of the decree. Here I am examining independent right of the applicant under Order 21 Rule 100 of Civil Procedure Code which stands on separate and different footing from S. 47. Moreover, here there is prescribed period of limitation, so

applicability of Article 137 is wholly out of question.

29. AIR 1982 Cal. 178: It is also a case of objection under S. 47 of the Civil Procedure Code and there was no prescribed period of limitation.

30. As I have already indicated I shall be deciding the aforesaid broad points of law on which all the applicants are relying on. There are number of applicants who have come up for the first time in this application, Mr. Mitra contends that these applications are combined one under S. 47 and Order 21 Rules 97 and 98. He contends regardless of right, title and interest of the applicants in the land in question in view of the provision of the aforesaid Act this decree cannot be executed by the decree holder as it has become non-executable by the virtue of S. 4 of the aforesaid Act which has got overriding effect over all the decrees, law contract. In my view right of raising questions relating to execution, discharge and satisfaction of decree are not available to all the persons but the parties to the suit and/or their representatives. The language of S. 47 is clear on this point. No third party excepting purchaser of the property can raise this question. Therefore, the only judgment debtor and or their representatives are entitled to raise the question of execution, discharge and/or satisfaction of the decree. Admittedly the applicants claim their independent right. So they cannot question the executability of the decree. Moreover question of executability cannot be decided once again while dealing with an application for police help as the executability has already been decided by the appeal Court previously at the instance of the judgment debtor and this has also been held in details by Justice Ruma Pal in His Lordship's judgment on 28th February 1994 and as affirmed by the appeal Court on 16th January 1998. Therefore I hold applicants herein cannot raise question relating to execution, discharge and satisfaction of order under S. 47 of the Code. But when the third party (ies) like the applicants herein come to protect their possession in other words to prevent the decree holder from getting the applicants evicted with their plea of independent and separate right the executing Court is bound to examine their right, title and interest under Order 21 Rule 100 of Civil Procedure Code. Here Mr. Mitra contends that his clients are thika tenants and/or the occupants of a bustee lands. They are not liable to be evicted by the decree holder since the land having been vested unto State of West Bengal and it can evict under due process of law.

31. While examining the aforesaid contention of Mr. Mitra first of all I examine the nature of the lands liable to be vested under S. 5 of the aforesaid Act. It will appear from the aforesaid Section which provides follows:—

> "S. 5 Lands comprised in thika tenancies, khas lands and other lands, etc. to vest in the State. — With effect from the date of commencement of this Act, the following lands along with the interest of landlords therein shall vest in the State, free from all incumbrances, namely:—
>
> (a) lands comprised in and appurtenat to tenancies of thika tenants including open areas, roads, passages, tank, pools and drains;
>
> (b) lands comprised in and appurtenant to bustees on khas lands of landlords and lands in slum areas including open areas, roads, passages, tanks, pools and drains;
>
> (c) other lands not covered by clauses (a) and (b) held under a written lease or otherwise, including open areas, roads, passages, tanks, pools and drains;
>
> (d) lands held in monthly or other periodical tenancies, whether under a written

lease or otherwise, for being used or occupied as khatal: Provided that such vesting shall not affect in any way the easements, customary right or other facilities enjoyed by thika tenants, Bharatias and occupiers of land coming within the purview of clause (c) and (d)."

32. Under S. 6 of the aforesaid Act the status of occupants in respect of the thika land on the date of vesting has been given. If a person is a thika tenant he or she will become a direct tenant under the State of West Bengal and if the land is occupied by Bharatia inducted by the thika tenant will be treated to be a sub-tenant under thika tenant and they are entitled to protection under West Bengal Premises Tenancy Act, 1956.

33. In the said Act I do not find any protection has been given or any status has been described in case of occupants in respect of bustees on khas land.

33A. Going by the definition of thika tenant vis-a-vis landlord it will appear that thika tenant would be the owner of the

structure and landlord which include superior one would be the holder and/or owner of the land and entitled to receive rent for occupation of the land from the thika tenants as explained by various decisions of this Court, viz. (1952) 60 Cal. WN 642 and 66 CWN 25 (Sic) as cited by Mr. Das. But in other cases to wit bustee on khas land occupants cannot be owner of the structure and this will appear from the definiition of the landlord as well as definition of Bharatia in the said Act (as amended in 1993).

34. In the pleading of the applicants being represented by Mr. Mitra it appears all through it has been claimed that his clients are the owners of the structure and they claim the thika tenancy. In my view under the scheme of the aforesaid Act the occupants qua thika tenants and bharatias are not synonymous with the occupants in the bustee on khas land. These two parallel cases cannot run together. If I take up the case of the thika tenancy then first of all there is no proof that Mr. Mitra's clients are owners of or have purchased or inherited the structure. Een if it is assumed that they are the owners then this alleged right of thika tenancy is not applicable nor provision of Act 1981 can be extended because their claims and contentions are based through Khemani and/or Manbhawati Devi, but Khemani's right, title and interest have come to an end upon determination of lease or for that matter on passing decree. This decree is not abated under Section 19 of the said Act as it was not passed in ejectment suit against thika tenants under the repealed Thika Tenancy Act, 1949. Therefoe, whatever acts and transactions had taken place after the decree was passed the same are invalid and the same are not binding upon the decree holder. Under the Deed of Lease all structures erected or allowed to be erected by judgment debtor/lessees were surendered and/or deemed to have been handed over to the decree holder and creation of alleged right subsequent to decree is not binding upon the decree holder/lessor. As far as the declaratory decree in favour of Manbhawati Devi is concerned the same is not binding upon the decree holder as the suit was between Khemani on the one hand and Manbhawati Devi on the other hand in relation to and/or based on relationship of lessee and thika tenant. When the decree in favour of Manbhawati was passed the alleged right of Khemani had come to an end on passing of this instant decree which is earlier in point of time and factum of passing decree against Khemani was not brought to notice of the learned Jude passing decree in favour Manbhawati Devi. Most importantly decree holder herein was not party to the suit of Manbhawati Devi.

35. That apart as rightly contended by Mr. Das the alleged right, title and interest as a thika tenant cannot be accepted as the same were created during pendency of the eviction suit or for that mater after passing the eviction decree. Therefore, such a case is hit by the principle of lis pendens. In this connection the decisions of Supreme Court reported in AIR 1998 SC 1754 (*Silver Line Forum* v. *Rajiv Trust*) ad (1990) 3 SCC 669 : (AIR 1991 SC 899) (*Krishna Kumar Khemka* v. *Grindlays Bank P.L.C.*) cited by him are absolutely applicable.

36. Moreover, the decree holder plaintiffs did not create any relationship of thika tenancy nor inducted any person in so-called bustee land as occupant thereof. It appears from the records this alleged thika tenancy right if at all was created by the lessee, Khemani who in his turn got right, title and interest on the strength of the said lease which had been determined before institution of the suit and long before the Act 1981 came into operation. The alleged creation of thika tenancy by Khemani or by Manbhawati Devi is wholly unauthorized and illegal, as none of them had any right or authority. They are at the highest tresspasser. Such illegal and unauthorized act of a trespasser does not bind the lawful owner who had obtained a decree. It is surprising two tresspassers without concurrence and consent of the owner decree holder could do as above to jeopardize and/or affect their interest. Under the decree read with the lease the Khemanies were supposed to quit and make over peaceful possession to the decree holder along with the structue which was then built and constructed, instead resortng to abuse of the process of the Court the judgment debtor and/or person claiming interest through them have been setting up wholly untenable title of thika tenancy.

37. In the case of *Sudhir Kumar Sarkar* v. *Bharat Sheet Metal* reported in (1998) 2 Cal LJ 463 : (1999 AIHC 409) it has been held by the Hon'ble Mr. Justice N.K. Mirta (as His Lordship then was) amongst other in order to attract the provisions of the Calcuta

Thika Tenancies and Lands (Acquisition and Regulation) Act, 1981 especially, Sections 4, 5 and 19 thereof it has to be seen whether any thika tenancy was subsisting on the date of commencement of Act. In this case as on the date of commencement of the said Act no thika tenancy could be said to be in existence as the eviction decree was passed in 1964. Therefore, I reject the contention and concept of thika tenancy.

38. As far as the question of vesting of the property on the ground of bustees under the provisions of Section 5 of the said Act is concerned the same is wholly frivolous as first of all there is no proof that the land in question comprised in and appurtenant to bustees on khas land of landlord. The applicants are relying on the contents of the Lease Deed. That apart there is no proof at all. If the Lease Deed is sought to be relied on then the effect thereof has extinguished in view of passing of the decree preceded by determination thereof. On the date of commencement of this Act that is 18th January, 1982 there was no valid and lawful relationship between the occupants and the landlord in relation to alleged bustee land consequent upon passing decree. In terms of the Lease Deed alleged structures were allowed to be built by the occupants and/or the lessees contrary to the scheme of relationship of landlord and occupants in bustee land in which the structure as well as the land both shall be owned by the landlords. In this case the structures admittedly belong to the occupants and/or the lessees and the same were agreed to be handed over to the lessor on determination of the lease. The relationship of landlord and bustee occupants was not creatd by the decree holder but by the lessees Khemani if at all and this limited right of the lessees

stood extinguished by determination of lease followed by decree. In order to hold a particular buste land being vested, in my opinion, on 18th January 1982 there must be lawful relationship between the landlord and occupants of bustees on the khas land.

39. Moreover I find from Corporation records that these lands were never treated as bustee land. Under the relevant Municipal law, viz., Calcutta Municipal Act, 1923 (Section 4), 1951 Act (Section 5(10)) and Calcutta Municipal Corporation Act, 1980 (Section 2(8)) the decision of Corporation authorities is final as to whether a land is bustee or not, as rightly submitted by Mr. Das. Excepting recital in the Lease Deed, I do not find any material to hold that it is khas land and bustee. It is significant to mention that the State of West Bengal has not come forward to claim the land being vested. Rather Thika Controller acted adversely against all the applicants. Thika Controller was compelled to act in terms of my order passed while siting in writ jurisdiction. Justice Samaresh Banerjea subsequently held the order in writ jurisdiction was obtained by suppression of material facts. Besides mere issuance of challans do not create any right or interest better than what was existed. The decisions cited by Mr. Mitra reported in (1976) 1 SCC 115 : (AIR 1975 SC 2295) and AIR 1975 Patna 164 have no application since I have held the aforesaid Act even by amendment, has not affected this decree as well as the land in question.

40. Now I shall take up the applications separately having regard to their respective case made out in the petition irespective of the above argument advanced by the learned Advocate on behalf of all the petitioners.

41. In the application of Mr. Mitra's clients it has been stated that they have been in possession and occupation as sub-tenants/thika tenants. However, in the affidavit in reply now case has been made out as occupant on the bustee land. These two cases are not alternatives. In fact under the law as I have discussed such alternative case cannot run side by side, one is conflicting with another. It is significant to mention that some of the applicants, viz., Kailash Prasad Khandelwal, Iswar Dayal Sharma, Biswanath Paul, Rajendra Yadav, Bhikhari Roy, Shanti Devi Mali, Harinath Singh, Pannalal Singh, Hooblal Yadav, Shew Shankar Singh, Tilak Dhari Singh, Munni Devi Singh and Munni Devi Mali previously came to this Court and took up the plea of adverse possession and their contentions have been rejected by the appeal Court. At that point of time those petitioners could have taken the plea of thika tenancy and/or sub-tenancy as on that date such plea was available. So apart from their dishonesty and act of falsehood in this matter their contentions are hit by the principle of constructive res judicata even when appeal was heard before the Division Bench in 1998 the aforesaid persons could have taken the plea of occupants of bustee land because by that time the amendment

had taken effect retrospectively. Point of law can be taken up at any stage even right up the appellate Court but this was not taken. So, the plea of occupant in bustee land is also hit by the principle of constructive res judicata as far as the aforesaid persons are concerned. The principle of res judicata is applicable under Explanation VII of Section 11 of Civil Procedure Code which says as follows:—

> "S. 11. Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and referenes in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree."

42. Factually, I do not find the State of West Bengal has made any claim in relation to the said property as being vested one. The Thika Controller even has not accepted the rent of its own and did not issue any challan until a contempt proceeding was taken out. The State of West Bengal has notice of this proceeding through Thika Controller and it has not come forward to make any claim. I do not find under the aforesaid Act or Rules framed thereunder any step consequent upon vesting having been taken.

43. Therefore, I hold this application filed by Mr. Mitra's clients in G.A. No. 1751 of 1998 is frivolous and the same is hereby dismissed with costs assessed at 300 gms to be paid to the decree holder.

G.A. No. 3192 of 1999

44. In this application even going by the averment made in the petition and supplementary affidavit this needs to be summarily dismissed as inconsistent and contradictory plea having been taken — one as a subtenant in the petition and thika tenant in supplementary affidavit. Even their case of sub-tenancy has been rejected by dismissing their title suit being No. 489 of 1999 of 1999 by the learned City Civil Court. This application stands dismissed with costs assessed at 100 gms to be paid to the decree holder.

G.A. No. 3226 of 1999.

45. This application should also be dismissed as the plea of sub-tenancy and thika tenancy having been taken and this inconsistent plea on the face of it cannot be entertained by any Court of law. It stands dismissed with costs assessed at 100 gms. to be paid to the decree holder.

G.A. No. 3273 of 1999.

46. The applicant in this application has taken the same plea as that of G.A. No. 1751 of 1998. Moreover, I find there is no single scrap of document to substantiate their alleged plea. As such this application stands dismissed with costs assessed at 100 gms. to be paid to the decree holder.

G.A. No. 3541 of 1999.

47. This application has taken plea of thika tenancy, adverse possession and subtenancy under Manbhawati Devi. The fate of this application is also dismissal with costs assessed at 100 gms. to be paid to the decree holder.

G.A. No. 3829 of 1999.

48. This application has taken a plea of bharatia alleged to be created by Manbhawati Devi who was alleged to be a thika tenant. Such relationship of bharatia was created on 16th August, 1990 when the execution proceeding is pending. So, this is a frivolous plea. So, this application is dismissed with costs assessed at 100 gms. to be paid to the decree holder.

G.A. No. 3782 of 1999.

49. In this case the petitioner is claiming to be tenant/bharatia in respect of one shop room under Manbhawati Devi who was alleged to be a thika tenant at premises No. 7, Singhi Dutta Lane. In support of her claim she has annexed few rent receipts and an agreement dated 16th August, 1990.

50. The case made out by the petitioner in this application on the face of it is not tenable inasmuch as this alleged creation of tenancy right by Manbhawati Devi is a subsequent event after passing the eviction decree. Manbhawati Devi was claiming right through Khemani on the strength of the declaratory decree and Khemani in his turn has right in terms of lease which determined long ago and followed by eviction decree. This creation of tenancy without consent, permission and knowledge of the decree holder is wholly invalid and illegal. Subsequent transaction by any person after passing of eviction decree is absolutely null and void.

51. Therefore, this application is dismissed with costs assessed at 100 gms. to be paid to the decree holder.

52. The application being Tender No. 1469 of 1999 has taken up a plea of thika tenancy, adverse possession and sub-tenancy and this inconsistent plea cannot be entertained and the same is hereby rejected with costs assessed at 100 gms. to be paid to the decree holder.

53. This Court has previously passed an order giving Police help, but the stay was granted for operation of the order. Under such circumstances the stay is vacated and the concerned Police officials is directed to carry out my earlier order.

54. Upon deposit of costs assessed at 300 gms. in terms of myjudgment, to be made by the applicants in G.A. No. 1751 of 1998 and by the other applicants @ 100 gms. with their respective Advocate-on-record the operation of this Judgment and order will remain stayed for a period of ten days from date. Respective Advocates-on-record will hold it until further order without any lien or attachment, operation of this judgment will remain stayed for seven days.

55. It is made clear that the deposit as above is a condition precedent.

56. All parties concerned are to act on a Xerox signed copy of this judgment and order on the undertaking that they will apply for certified copy of the judgment.

Order accordingly.

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(2010) 2 Supreme Court Cases 461

(BEFORE G.S. SINGHVI AND A.K. GANGULY, JJ.)

MANDAL REVENUE OFFICER .. Appellant;

Versus

GOUNDLA VENKAIAH AND ANOTHER .. Respondents.

Civil Appeal No. 1569 of 2001†, decided on January 6, 2010

A. **Property Law — Adverse possession — Ingredients of — Open and hostile possession qua owner — Determination of — Government land — Held, dropping of proceedings under erstwhile Andhra Pradesh Land Encroachment Act, 1905 (3 of 1905) (since substituted by new Act) did not lead to an inference that respondents' possession was open and hostile against Government — Further held, payment of land revenue and making of application to Government for assignment of schedule land or regularisation of possession was negation of respondents' plea that they had acquired title by adverse possession — Limitation Act, 1963, Arts. 64 and 65**

B. **Tenancy and Land Laws — Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (12 of 1982) — S. 2(d) — Land grabber — Who is — Government land — Where occupier of land was not able to prove adverse possession against Government — Held on facts, such person and his legal representatives were land grabbers**

C. **Constitution of India — Art. 226 — Interference in tenancy and land law matters — On facts held, High Court exceeded its jurisdiction in interfering with concurrent findings of Special Tribunal and Special Court that respondents were land grabbers and their title by means of adverse possession was not proved**

One *G*, who was predecessor of the respondents, had illegally occupied five acres of government land. In 1965 and 1986 notices were issued to *G* under Section 7 of the erstwhile Andhra Pradesh Land Encroachment Act, 1905 but no order was passed for his eviction. In 1990 the Mandal Revenue Officer filed an application before the Special Tribunal constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, for recovery of land. During pendency of application, *G* died and the respondents were brought on record as his legal representatives. The Special Tribunal allowed application of the Mandal Revenue Officer and declared that *G* and the respondents were land grabbers. Appeal preferred by the respondents was dismissed by the Special Court by a detailed order. However, the High Court on writ petition filed by the respondents, held that the respondents were not land grabbers because they had proved their title by adverse possession.

Allowing the appeal of the Mandal Revenue Officer, the Supreme Court

Held:

The High Court exceeded its jurisdiction and committed an error by interfering with the well-articulated and well-reasoned concurrent findings recorded by the Special Tribunal and the Special Court that *G* had illegally occupied government land and after his death, the respondents continued with the illegal possession and as such they were liable to be treated as land grabbers

† From the Judgment and Order dated 20-6-2000 of the High Court of Andhra Pradesh at Hyderabad in WP No. 30236 of 1998

within the meaning of Section 2(*d*) of the Land Grabbing Act, and that they have failed to prove that their possession was open and hostile to the Government so as to entitle them to claim title over the schedule land by adverse possession. (Para 44)

Syed Yakoob v. *K.S. Radhakrishnan*, AIR 1964 SC 477, *relied on*

The approach adopted by the High Court was ex facie erroneous because absence of final order in the proceedings initiated under the Encroachment Act cannot lead to an inference that the authority concerned had recognised possession of *G* over the schedule land. Even if it was to be presumed that proceedings initiated against *G* under the Encroachment Act had been dropped, the said presumption cannot be overstretched for entertaining the respondents' claim that their possession was open and hostile qua the true owner i.e. the Government. Payment of land revenue by *G* and/or the respondents and making of applications by them to the Government for assignment of schedule land or regularisation of their possession, completely demolish their case that their possession was open and hostile and they have acquired title by adverse possession. (Para 46)

Konda Lakshmana Bapuji v. *Govt. of A.P.*, (2002) 3 SCC 258; *Mahalaxmi Motors Ltd.* v. *Mandal Revenue Officer*, (2007) 11 SCC 714; *V. Laxminarasamma* v. *A. Yadaiah*, (2009) 5 SCC 478 : (2009) 2 SCC (Cri) 711, *relied on*

Govt. of A.P. v. *Thummala Krishna Rao*, (1982) 2 SCC 134, *held, distinguished* in *V. Laxminarasamma* v. *A. Yadaiah*, (2009) 5 SCC 478 : (2009) 2 SCC (Cri) 711

Gouni Satya Reddi v. *Govt. of A.P.*, (2004) 7 SCC 398, *held, impliedly overruled*

N. Srinivasa Rao v. *Special Court*, (2006) 4 SCC 214, *held, overruled*

D. **Property Law — Adverse possession — Government land — Approach of court in cases of — Practical difficulties in keeping watch over vast tracts of open land — Occupier's claim that he perfected his title by adverse possession — Held, must be examined by court with greater caution in such cases — Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Ss. 2(d), (e) & 4 — Tenancy and Land Laws — Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (12 of 1982) — Ss. 2(d), (e), 3 & 4**

Held :

It is impossible for the State and its instrumentalities including local authorities to keep everyday vigilance/watch over vast tracts of open land owned by them or of which they are public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeed in manipulating the State apparatus for getting their occupation/possession and construction regularised. Where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty-bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give an upper hand to encroachers, unauthorised occupants or land grabbers. The respondents have failed to establish that they had acquired title over schedule land by adverse possession. (Paras 47 and 52)

State of Rajasthan v. *Harphool Singh*, (2000) 5 SCC 652; *A.A. Gopalakrishnan* v. *Cochin Devaswom Board*, (2007) 7 SCC 482; *Annakili* v. *A. Vedanayagam*, (2007) 14 SCC 308; *P.T. Munichikkanna Reddy* v. *Revamma*, (2007) 6 SCC 59, *relied on*

P. Lakshmi Reddy v. *L. Lakshmi Reddy*, AIR 1957 SC 314, *referred to*

E. **Tenancy and Land Laws — Land grabbing — Government land — Supreme Court's directions for preventing misuse of State machinery in getting the possession regularised by land grabbers — Respondents found to be land grabbers as they could not prove their title by adverse possession — Government directed not to regularise their possession — Further held, respondents also not entitled to invoke jurisdiction of any court, including High Court, for securing any order which may result in frustrating implementation of Supreme Court order — Constitution of India — Arts. 142(1), 136, 226 and 227 — Jurisdiction of Supreme Court to pass an order which would do complete justice — Foreclosing option to approach any court including High Court**

Held :

With a view to ensure that the respondents are not able to manipulate the State apparatus for continuing their illegal occupation of the schedule land, the Government of Andhra Pradesh and its functionaries are directed not to regularise their possession. The respondents shall also not be entitled to invoke the jurisdiction of any court including the High Court for securing an order which may result in frustrating the implementation of the Supreme Court's order. (Para 54)

F. **Tenancy and Land Laws — Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (12 of 1982) — Ss. 2(d), (e) and 4 — Prohibition against land grabbing — Scope of — Held, the legislation deals with all types of land grabbing, whether the land is public or private — The Act is a self-contained code and provides for a comprehensive mechanism which is substantially different from previous legislation, namely, Andhra Pradesh Land Encroachment Act, 1905, for eviction of land grabbers and adjudication of related disputes without requiring parties to seek remedy before regular courts — The definition of land grabber also includes those who abet land grabbing or finance activity of land grabbing, etc. and successors-in-interest of land grabber — Penal Code, 1860, S. 503 (Paras 12 and 20)**

Govt. of A.P. v. Thummala Krishna Rao, (1982) 2 SCC 134, *relied on*

Special Courts Bill, 1978, In re, (1979) 1 SCC 380, *referred to*

G. **Tenancy and Land Laws — Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (12 of 1982) — S. 2(e) — "Land grabbing" — Definition of — Held, is very wide (Para 21)**

H. **Interpretation of Statutes — Basic Rules — Purposive construction — Mischief rule/Heydon's rule — Interpretation which ought to be given to Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Purpose of the Act, held, is to free public and private land from clutches of encroachers and unauthorised occupants — Provisions of the Act are therefore required to be interpreted by applying rule of purposive construction or mischief rule — Tenancy and Land Laws — Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (12 of 1982), Ss. 2(d), (e) & 4 (Para 19)**

Heydon case, (1584) 3 Co Rep 7a : 76 ER 637, *applied*

Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661 : (1955) 2 SCR 603, *relied on*

K-D/44510/CR

Advocates who appeared in this case :

R. Sundaravardan, S.B. Sanyal and A.K. Ganguli, Senior Advocates (Manoj Saxena, Rajnish Kr. Singh, Rahul Shukla, Ms Bachita Baruah, T.V. George, Vijay Kr. Vishwajit Singh, R. Upadhyay, M.N. Rao, A.D.N. Rao, Nikhil Nayyar, T.V.S.R. Sreyas, T. Anamika and S. Thananjayan, Advocates) for the appearing parties.

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2. (2007) 14 SCC 308, *Annakili* v. *A. Vedanayagam* 484*e-f*
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7. (2004) 7 SCC 398, *Gouni Satya Reddi* v. *Govt. of A.P.* **(held, impliedly overruled)** 475*f-g*, 476*c*, 477*e*
8. (2002) 3 SCC 258, *Konda Lakshmana Bapuji* v. *Govt. of A.P.* 473*f-g*, 474*a-b*, 474*e*, 475*d*, 476*c*, 476*d-e*, 476*f*, 477*d-e*, 477*e*, 477*f*, 478*a*
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10. (1982) 2 SCC 134, *Govt. of A.P.* v. *Thummala Krishna Rao* 466*h*, 478*b*, 478*e-f*, 481*a*
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12. AIR 1964 SC 477, *Syed Yakoob* v. *K.S. Radhakrishnan* 482*a-b*, 482*d*
13. AIR 1957 SC 314, *P. Lakshmi Reddy* v. *L. Lakshmi Reddy* 484*a*
14. AIR 1955 SC 661 : (1955) 2 SCR 603, *Bengal Immunity Co. Ltd.* v. *State of Bihar* 471*f-g*
15. (1584) 3 Co Rep 7a : 76 ER 637, *Heydon case* 471*f*, 471*g*

The Judgment of the Court was delivered by

G.S. SINGHVI, J.— This appeal is directed against the order dated 20-6-2000 passed by the Division Bench of the Andhra Pradesh High Court whereby it allowed the writ petition filed by the respondents, quashed the orders passed by the Special Tribunal and the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as "the Land Grabbing Act") and declared that the respondents have acquired title over the schedule property by adverse possession.

2. Gonda Mallaiah (the predecessor of the respondents) illegally occupied 5 acres of land comprised in Survey No. 42, Khanament Village, Ranga Reddy District, which is classified in the revenue records as kharizkhata sarkari. In 1965 and 1986, notices were issued to Gonda Mallaiah under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 but no order appears to have been passed for his eviction. In 1990, the Mandal Revenue Officer, Serlingampally, Ranga Reddy District (the appellant herein) filed an application before the Special Tribunal constituted under the Land Grabbing Act for recovery of the possession of 5 acres of land by alleging that the same was illegally occupied by Gonda Mallaiah. During the pendency of the application, Gonda Mallaiah died and the respondents herein were brought on record as his legal representatives.

3. In their reply, the respondents denied the allegation that their father had illegally occupied the land and pleaded that they have acquired title by adverse possession because they are in possession of the land and cultivating

the same for last more than 50 years without any interference or obstruction. The respondents further pleaded that being landless poor they are entitled to assignment of land as per the Board's Standing Orders, but instead of acting on their representations, the appellant initiated proceedings under the Land Grabbing Act by wrongly treating them as land grabbers.

4. By an order dated 27-5-1997, the Special Tribunal allowed the application of the appellant and declared that the schedule land is government land which had been grabbed by Gonda Mallaiah and his successors and directed them to hand over possession thereof to the Government within 2 months. The appeal preferred by the respondents was dismissed by the Special Court by detailed order dated 18-8-1998.

5. The respondents challenged the orders of the Special Tribunal and the Special Court in Writ Petition No. 30262 of 1998. The Division Bench of the High Court did not disturb the concurrent finding recorded by the Special Tribunal and the Special Court that the schedule land is government land but set aside the orders passed by them on the premise that the respondents have acquired title by adverse possession and as such they cannot be evicted by being treated as land grabbers.

6. Shri R. Sundaravardan, learned Senior Counsel for the appellant submitted that the impugned order is liable to be set aside because the laboured attempt made by the High Court to justify its interference with the concurrent finding recorded by the Tribunal and the Special Court on the issue of illegal possession of the respondents and their predecessor is wholly unwarranted and uncalled for. The learned Senior Counsel pointed out that after making an in-depth analysis of the evidence produced by the parties, the Special Tribunal and the Special Court categorically held that the land comprised in Survey No. 42 of Village Khanament, Ranga Reddy District is government land and Gonda Mallaiah had illegally occupied a portion thereof and argued that the High Court committed a serious jurisdictional error by interfering with the said finding merely because on reappreciation of the factual matrix of the case and evidence produced by the parties, a different conclusion could be reached.

7. The learned counsel criticised the High Court's analysis of the documents produced by the parties including notice dated 22-6-1985 issued to one R. Mallaiah under Section 7 of the Encroachment Act and the reply filed by him by pointing out that the observation made by the Special Court that the documents were suspicious in nature did not call for interference by the High Court. The learned counsel also assailed the finding of the High Court that the respondents have acquired title by adverse possession and argued that in the absence of any evidence to show that possession of Gonda Mallaiah and the respondents was continuous and openly hostile to the Government, they cannot be said to have perfected their title over the schedule land.

8. Shri M.N. Rao, learned Senior Counsel appearing for the respondents repeatedly urged that this Court should not pronounce upon the legality and correctness of the impugned order because the application made by the respondents for assignment of land and/or regularisation of their possession

in accordance with the policy framed by the Government is pending and is likely to be decided shortly. He then argued that the finding recorded by the High Court in favour of the respondents on the issue of their having acquired title by adverse possession is unassailable because the evidence produced by the parties is sufficient to establish that Gonda Mallaiah and the respondents were in uninterrupted possession of the schedule land for more than 50 years and the proceedings initiated against Gonda Mallaiah under the Encroachment Act were dropped after due consideration of the reply filed by him. Shri Rao submitted that failure of the authorities concerned of the Government to challenge the occupation of land by Gonda Mallaiah and the respondents for more than 50 years is conclusive of the fact that their possession was open and hostile and the High Court did not commit any error by declaring that the respondents have acquired title over the schedule land by adverse possession.

9. We have thoughtfully considered the entire matter. The phenomenon of encroachment, unauthorised occupation and grabbing of public lands is as old as human civilisation. From time to time, legislations have been enacted to curb this menace of encroachment. One such legislation i.e. the Madras Land Encroachment Act, 1905 was enacted by the legislature of the erstwhile State of Madras. After formation of the State of Andhra Pradesh, necessary changes were made in the nomenclature of the Act and it is now known as the Andhra Pradesh Land Encroachment Act, 1905 (hereinafter referred to as "the Encroachment Act"). Section 2(1) of the Encroachment Act declares that all public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks and all canals and water-courses, and all standing and flowing water, and all lands except those enumerated in clauses (*a*) to (*e*) shall be the property of the Government.

10. Section 2(2) further declares that all public roads and streets vested in any local authority shall be deemed to be the property of Government for the purpose of the Act. Section 5 defines liability of person unauthorisedly occupying land and Section 6 prescribes summary procedure for eviction of person unauthorisedly occupying land for which he is liable to pay assessment in terms of Section 3. Section 7 incorporates the rule of audi alteram partem and makes it obligatory for the competent authority to issue notice and give opportunity of hearing to the alleged unauthorised occupant of land being the property of Government. Section 7-A, which was added with effect from 13-5-1980 provides for eviction of encroachment made by a group of persons.

11. In some of the proceedings initiated under the Encroachment Act in the State of Andhra Pradesh, the occupants of the land questioned the Government's title over it by contending that they came into possession on the basis of validly executed lease, licence or sale transaction. The Andhra Pradesh High Court ruled that bona fide dispute relating to the title of land raised by the occupant cannot be decided in summary proceedings and such dispute can be adjudicated only by a regular civil court. In *Govt. of A.P.* v.

Thummala Krishna Rao[1] this Court approved the view of the High Court and held that the Government cannot take unilateral decision that the property belongs to it and then take recourse to summary remedy under Section 6 of the Encroachment Act for eviction of the occupant.

12. In view of the aforementioned development and keeping in mind the fact that there has been large-scale grabbing of land belonging to the Government, local authorities, religious/charitable institutions including a wakf and even private lands, the State Legislature enacted the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as "the Land Grabbing Act") to prohibit every activity of land grabbing in the State and to provide for matters connected therewith. The new legislation deals with all types of land grabbing, public as well as private and provides for a comprehensive mechanism, which is substantially different than the one provided in the Encroachment Act, for eviction of land grabber and adjudication of related disputes without requiring the parties to seek remedy before the regular court.

13. The necessity of bringing the new legislation is clearly reflected in the Statement of Objects and Reasons incorporated in the Bill, which led to enactment of the Land Grabbing Act. The same read as under:

> "An Act to prohibit the activity of land grabbing in the State of Andhra Pradesh and to provide for matters connected therewith.
>
> Whereas 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 (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private persons) who are known as 'land grabbers'.
>
> And whereas such land grabbers are forming bogus cooperative housing societies or setting up fictitious claims and indulging in large-scale and unprecedented and fraudulent sales of lands belonging to the Government, local authority, religious or charitable institutions or endowments including a wakf, or private persons, through unscrupulous real estate dealers or otherwise in favour of certain sections of the people resulting in large accumulation of unaccounted wealth and quick money to land grabbers;
>
> And whereas, having regard to the resources and influence of the persons by whom, the large scale on which and the manner in which, the unlawful activity of land grabbing was, has been or is being organised and carried on in violation of law by them, as land grabbers in the State of Andhra Pradesh, and particularly in its urban areas, it is necessary to arrest and curb immediately such unlawful activity of land grabbing;
>
> And whereas, public order is adversely affected by such unlawful activity of land grabbers."

14. Although the Land Grabbing Act envisaged constitution of Special Courts, absence of a specific provision making the Code of Civil Procedure and the Code of Criminal Procedure applicable to the proceedings before such court enabled the land grabbers to approach the ordinary courts and get the orders of injunction which resulted in frustrating the proceedings initiated

1 (1982) 2 SCC 134

under the Land Grabbing Act for their eviction. Therefore, the Governor of the State promulgated the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Ordinance, 1986.

15. The need for amendment is discernible from the Statement of Objects and Reasons, which are reproduced below:

> "Law's delays is an undeniable fact. Matters pending in civil and criminal courts take frustratingly long periods to reach finality. Matters pending in civil courts are delayed notoriously for long periods, even criminal cases taking long periods for disposal. The observations of Hon'ble Shri Y.V. Chandrachud, Chief Justice, Supreme Court of India, in *Special Courts Bill, 1978, In re*[2] highlight the reality. In urban areas due to pressure on land, prices have been constantly soaring high, and taking advantage of this phenomenon, unscrupulous and resourceful persons backed by wealth and following occupied without any semblance of right, vast extents of land belonging to the Government, local authorities, wakfs, and charitable and religious endowments and evacuees and private persons. In several cases such illegal occupations were noticed in respect of lands belonging to private individuals who are not in a position to effectively defend their possession. In many cases this is being done by organised groups loosely called 'mafia', a distinct class of economic offenders, operating in the cities of Andhra Pradesh. Unless all such cases of land grabbing are immediately detected and dealt sternly and swiftly by specially devised adjudicating forums the evil cannot subside and social injustice will continue to be perpetrated with impunity. If civil and criminal actions are dealt by two separate forums, the desired objective cannot be achieved due to procedural delays. In every case of land grabbing the person responsible is liable in tort and also for criminal action. To remedy this menace it is felt that a Special Court should be constituted with jurisdiction to determine both civil and criminal liabilities and also award sentences of imprisonment and fine in order to advance the cause of justice in the same proceeding without being driven to duplication of litigation, of course taking care of procedural fairness and natural justice. The Special Court which consists of a serving or retired Judge of a High Court, serving or retired District Judges and serving or retired civil servants not below the rank of District Collector will entertain only such cases in which the magnitude of the evil needs immediate eradication. Such court will avoid duplication and further the cause of justice, since under existing law, evidence given in a civil court cannot automatically be relied upon in a criminal proceeding.
>
> A high-powered body like the Special Court, by the very nature of its composition will be the best safeguard to guard against possible miscarriage of justice due to non-application of the existing procedural law for determination of both civil and criminal liability. The Special Court, in exercise of its judicial discretion, will decide what type of cases of alleged land grabbing it should entertain, the guidelines being the extent or the value or the location or other like circumstances of the land alleged to have been grabbed. In respect of matters in which the Special Court is not inclined to proceed with, the District Judge exercising jurisdiction over the area will constitute the Special Tribunal. The Special Tribunal shall have to follow the

2 (1979) 1 SCC 380

procedural law strictly and its jurisdiction is limited only to adjudicating civil liability.

With a view to achieving the aforesaid objective, it has been decided to amend the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 by undertaking suitable legislation."

16. The 1986 Ordinance was replaced by the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987.

17. We may now notice the relevant provisions of the Land Grabbing Act as amended in 1987. The same are as under:

"2. *Definitions.*— * * *

(*d*) '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 unauthorised 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 abovementioned acts, and also includes the successors-in-interest.

(*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 unauthorised 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 unauthorised structures; and the term 'to grab land' shall be construed accordingly.

* * *

3. *Land grabbing to be unlawful.*—Land grabbing in any form is hereby declared unlawful; and any activity connected with or arising out of land grabbing shall be an offence punishable under this Act.

4. *Prohibition of land grabbing.*—(1) No person shall commit or cause to be committed land grabbing.

(2) Any person who, on or after the commencement of this Act, continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment including a wakf, or other private person, shall be guilty of an offence under this Act.

(3) Whoever contravenes the provisions of sub-section (1) or sub-section (2) shall, on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend to five years, and with fine which may extend to five thousand rupees.

* * *

7. *Constitution of Special Courts.*—(1) The Government may, for the purpose of providing speedy enquiry into any alleged act of land grabbing, and trial of cases in respect of the ownership and title to, or lawful possession of, the land grabbed, by notification, constitute a Special Court.

* * *

(5-D)(*i*) Notwithstanding anything in the Code of Civil Procedure, 1908, the Special Court may follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play and subject to the other provisions of this Act and of any rules made thereunder while deciding the civil liability.

* * *

7-A. *Special Tribunals and its powers, etc.*—(1) Every Special Tribunal shall have power to try all cases not taken cognizance of by the Special Court relating to 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 the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987 and brought before it and pass such orders (including orders by way of interim directions) as it deems fit:

* * *

(2) Save as otherwise provided in this Act, a Special Tribunal shall, in the trial of cases before it, follow the procedure prescribed in the Code of Civil Procedure, 1908 (5 of 1908).

(3) An appeal shall lie, from any judgment or order not being interlocutory order of the Special Tribunal, to the Special Court on any question of law or of fact. Every appeal under this sub-section shall be preferred within a period of sixty days from the date of judgment or order of the Special Tribunal:

* * *

(4) Every finding of the Special Tribunal with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing, and of the persons who committed such land grabbing and every judgment of the Special Tribunal with regard to the determination of the title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land:

* * *

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

(2) Notwithstanding anything in the Code of Civil Procedure, 1908 (5 of 1908), the Code of Criminal Procedure, 1973 or in the Andhra Pradesh Civil Courts Act, 1972 (19 of 1972), any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land grabbed under this Act shall, subject to the provisions of this Act, be triable in the Special Court and the decision of Special Court shall be final.

* * *

(6) Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land:

* * *

9. *Special Court to have the powers of the civil court and the Court of Session.*—Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), the Andhra Pradesh Civil Courts Act, 1972 (19 of 1972) and the Code of Criminal Procedure, 1973 (2 of 1974), insofar as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a civil court, or as the case may be, a Court of Session and shall have all the powers of a civil court and a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

10. *Burden of proof.*—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 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.

* * *

15. *Act to override other laws.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a court or any other tribunal or authority."

18. The Land Grabbing Act was enacted in the backdrop of large-scale encroachment and unauthorised occupation of land belonging to the Government, local authorities, religious or charitable institutions including wakf as also the land belonging to private individuals and the fact that the remedy provided under the Encroachment Act was only in respect of government land and was otherwise found to be wholly insufficient to meet the challenge posed by the menace of land grabbing.

19. Since the basic objective of the Land Grabbing Act is to free the public as well as private land from the clutches of encroachers and unauthorised occupants, the provisions contained therein are required to be interpreted by applying the rule of purposive construction or mischief rule which was enunciated in *Heydon case*[3] and which has been invoked by this Court for construing different legislations. In *Bengal Immunity Co. Ltd.* v. *State of Bihar*[4], S.R. Das, C.J. explained this rule in the following words: (AIR p. 674, para 22)

"22. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon case*[3] was decided that: (ER p. 638)

'... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act.

3 (1584) 3 Co Rep 7a : 76 ER 637
4 AIR 1955 SC 661 : (1955) 2 SCR 603

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. the true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*.' "

20. The Land Grabbing Act is a self-contained code. It deals with various facets of land grabbing and provides for a comprehensive machinery for determination of various issues relating to land grabbing including the claim of the alleged land grabber that he has a right to occupy the land or that he has acquired title by adverse possession. A reading of the plain language of the definition of land grabber shows that it takes within its fold not only a person or a group of persons who actually commits the act of land grabbing but includes those who give financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures on such land, or who collects or attempts to collect from the occupier of such lands rent, compensation and other charges by criminal intimidation. The definition also includes the one who abets the doing of the actual land grabbing or financing the activity of land grabbing, etc. as also successor-in-interest of land grabber.

21. The definition of expression "land grabbing" is very wide. It covers every activity of grabbing of any land belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf or even a private person, without any lawful entitlement and with a view to take illegal possession of such lands. The creation of illegal tenancies, lease and licence agreements or any other illegal agreements in respect of or construction of unauthorised structures or sale or hire, etc. are also treated as acts of land grabbing.

22. Section 3 declares land grabbing in any form as unlawful and makes any activity connected with or arising out of land grabbing an offence punishable under the Act. Section 4(1) lays down that no person shall commit or cause to be committed any land grabbing. Section 4(2) lays down that any person who, on or after the commencement of the Act, continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment including a wakf, or other private person, shall be guilty of an offence under the Act.

23. By Section 7(1), the State Government is empowered to constitute a Special Court for expeditiously holding an enquiry into any alleged act of land grabbing and trial of cases in respect of the ownership and title to, or lawful possession of the land grabbed. Section 7-A(1) lays down that every

Special Tribunal shall have power to try all cases of which cognizance has not been taken by the Special Court whether before or after the commencement of the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987. Section 7-A(2) lays down that a Special Tribunal shall, save as otherwise provided in the Act, follow the procedure prescribed in the Code of Civil Procedure (CPC) in the trial of cases under the Act. Section 7-A(3) provides for an appeal against any judgment or order except an interlocutory order, to the Special Court on any question of law or of fact.

24. By virtue of Section 8(1), the Special Court is empowered to either suo motu, or on an 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 the Act and pass appropriate orders including by way of interim directions. Section 8(2) contains a non obstante clause and gives finality to the decision of the Special Court and the provisions of CPC and the Code of Criminal Procedure (CrPC) shall, insofar as they are not inconsistent with the provisions of the Act, apply to the proceedings before the Special Court.

25. By Section 9, the provisions of CPC and the Code of Criminal Procedure have been made applicable to the proceedings of the Special Court except insofar as they are not inconsistent with the provisions of the Act. This section also declares that a Special Court shall be deemed to be a civil court or, as the case may be, as the Court of Session and shall have the powers of a civil court and a Court of Session. Section 10 contains special rule of burden of proof. It lays down that where there is an allegation of land grabbing and the land which is the subject-matter of grabbing is prima facie proved to be owned by the Government or by a private person, the Special Court/Special Tribunal shall presume that the person who is alleged to have grabbed the land is a land grabber and it is for him to prove the contrary.

26. As happens with several other statutes, the provisions of the Land Grabbing Act have also become subject of judicial debate and interpretation and in some judgments apparently conflicting views have been expressed necessitating consideration by a larger Bench. The ambit and scope of the definitions of "land grabbers" and "land grabbing" was considered by a two-Judge Bench of this Court in *Konda Lakshmana Bapuji* v. *Govt. of A.P.*[5] The facts of that case were that on the strength of an unregistered agreement for perpetual lease executed by one of the successors of the inamdar Shri Mohd. Noorudin Asrari, the appellant claimed his title over the land comprising of various parts of Survey No. 9 of Village Khairathabad, Golconda Mandal, Hyderabad District. Later, Shri Asrari is said to have executed a registered perpetual deed in favour of the appellant. Another person named Rasheed Shahpurji Chenoy also claimed the same piece of land. He filed a suit in the Court of the Additional Chief Judge, City Civil Court, Hyderabad. The trial court dismissed the suit by recording a finding that the suit land was a government land and the plaintiff did not have any

5 (2002) 3 SCC 258

title over it. As a sequel to this, the Tahsildar, Hyderabad initiated proceedings against the appellant and passed an order on 28-5-1977 for his eviction. The appellant challenged that order by filing a writ petition in the High Court. The learned Single Judge allowed the writ petition.

27. During the pendency of writ appeal preferred by the respondents in *Konda Lakshmana case*[5], the Land Grabbing Act came into force. However, this was not brought to the notice of the Division Bench, which opined that there was bona fide dispute of title, which must be adjudicated by the ordinary court of law. Accordingly, the writ appeal was dismissed. The appellant filed another writ petition against his threatened dispossession. The same was disposed of by the learned Single Judge by taking note of the observations made by the Division Bench and the fact that the Government had already filed a suit in the Court of IVth Additional Judge, City Civil Court, Hyderabad for declaration of title and recovery of possession. Later on, the suit was transferred to the Special Court, which ruled against the appellant. The order of the Special Court was upheld by the Division Bench of the High Court. Before this Court it was argued that the appellant could not be treated as a land grabber because he was in permissive possession and that he was having a bona fide claim to the property in dispute as held by the High Court in Writ Petition No. 1414 of 1977 and Writ Appeal No. 61 of 1978. The second contention urged on behalf of the appellant was that the Special Court had no jurisdiction to try the case. The last contention was that the appellant had perfected his title to the land in dispute by adverse possession.

28. This Court analysed the definitions of "land grabber" and "land grabbing", referred to the dictionary meaning of the term "grab" and observed: (*Konda Lakshmana case*[5], SCC pp. 280-81, paras 37-38)

> "*37.* The various meanings noted above, disclose that the term 'grab' has a broad meaning—to take unauthorisedly, greedily or unfairly—and a narrow meaning of snatching forcibly or violently or by unscrupulous means. Having regard to the object of the Act and the various provisions employing that term we are of the view that the term 'grab' is used in the Act in both its narrow as well as broad meanings. Thus understood, the ingredients of the expression 'land grabbing' would comprise (*i*) the factum of an activity of taking possession of any land forcibly, violently, unscrupulously, unfairly or greedily without any lawful entitlement, and (*ii*) the mens rea/intention — 'with the intention of/with a view to' (*a*) illegally taking possession of such lands, or (*b*) enter into or create illegal tenancies, lease and licence agreements or any other illegal agreements in respect of such lands, or (*c*) to construct unauthorised structures thereon for sale or hire, or (*d*) to give such lands to any person on (*i*) rental, or (*ii*) lease and licence basis for construction, or (*iii*) use and occupation of unauthorised structures.
>
> *38.* A combined reading of clauses (*d*) and (*e*) would suggest that to bring a person within the meaning of the expression 'land grabber' it

5 *Konda Lakshmana Bapuji* v. *Govt. of A.P.*, (2002) 3 SCC 258

must be shown that: (*i*)(*a*) he has taken unauthorisedly, unfairly, greedily, snatched forcibly, violently or unscrupulously any land belonging to the Government or a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person; (*b*) without any lawful entitlement; and (*c*) with a view to illegally taking possession of such lands, or enter or create illegal tenancies or lease and licence agreements or any other illegal agreements in respect of such lands or to construct unauthorised 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 unauthorised structures; or (*ii*) he has given financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon; or (*iii*) he is collecting or attempting to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation; or (*iv*) he is abetting the doing of any of the abovementioned acts; or (*v*) that he is the successor-in-interest of any such persons."

29. The Court then considered the question whether a person prima facie claiming title over the land alleged to have been grabbed can also be treated as covered by the expression "land grabber" and answered the same in the following words: (*Konda Lakshmana case*[5], SCC p. 283, para 45)

"*45.* In regard to the ingredients of the expression 'land grabber', it is necessary to point out that it is only when a person has lawful entitlement to the land alleged to be grabbed that he cannot be brought within the mischief of the said expression. *A mere prima facie bona fide claim to the land alleged to be grabbed by such a person, cannot avert being roped in within the ambit of the expression 'land grabber'. What is germane is lawful entitlement to and not a mere prima facie bona fide claim to the land alleged to be grabbed.* Therefore, the observation of the Division Bench of the High Court in the said Writ Appeal No. 61 of 1978 that the appellant can be taken to have prima facie bona fide claim to the land in dispute which was relevant for the said Land Encroachment Act, cannot be called in aid as a substitute for lawful entitlement to the land alleged to be grabbed, which alone is relevant under the Act."

(emphasis supplied)

30. In *Gouni Satya Reddi* v. *Govt. of A.P.*[6] another two-Judge Bench appears to have expressed a slightly different view. The appellant in that case claimed to have purchased the land in dispute by a registered sale deed executed on behalf of Respondent 3 by his general power-of-attorney holder, S. Prabhakar Rao. Before starting construction, he obtained permission from the competent authority. One Tirupathiah claiming to be general power-of-attorney holder of Respondent 3 objected to the construction by asserting that the earlier general power-of-attorney holder of Respondent 3 had no right to transfer the property. Thereupon, the appellant filed a suit for injunction. An

5 *Konda Lakshmana Bapuji* v. *Govt. of A.P.*, (2002) 3 SCC 258
6 (2004) 7 SCC 398

order of status quo was passed. Tirupathiah also filed a suit. The trial court finally decreed the suit of the appellant and dismissed the one filed by Tirupathiah. Thereafter, the appellant filed a suit before the Special Court for restraining Tirupathiah from interfering with his possession. The Special Court did not believe the appellant's case that he had purchased the property from S. Prabhakar Rao and dismissed the suit. While allowing the appeal preferred against the order of the Special Court, this Court referred to the definitions of land grabber and land grabbing and ruled that the appellant cannot be treated as land grabber because he was not aware of the fact that he was entering into possession illegally and without lawful entitlement.

31. In *Mahalaxmi Motors Ltd.* v. *Mandal Revenue Officer*[7] yet another Bench of two Judges held that a mere allegation of land grabbing is sufficient to invoke the jurisdiction of the Special Court and that civil court's jurisdiction is ousted in all matters which fall within the jurisdiction of the Special Court. The Bench referred to judgments in *Konda Lakshmana Bapuji* v. *Govt. of A.P.*[5], *Gouni Satya Reddi* v. *Govt. of A.P.*[6] and observed: (*Mahalaxmi Motors case*[7], SCC pp. 732-33, paras 38 & 42-44)

> "38. Lawful entitlement on the part of a party to possess the land being the determinative factor, it is axiomatic that so long as the land grabber would not be able to show his legal entitlement to hold the land, the jurisdiction of the Special Court cannot be held to be ousted.
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> * * *
>
> 42. The Bench in *Konda Lakshmana Bapuji*[5] has applied both the broader and narrow meanings of the said expression. *It would not, however, mean that all the tests laid down therein are required to be satisfied in their letter and spirit. What is necessary to be proved is the substance of the allegation.* The proof of intention on the part of a person being his state of mind, the ingredients of the provisions must be considered keeping in view the materials on records as also circumstances attending thereto. *What would be germane for lawful entitlement to remain in possession would be that if the proceedee proves that he had bona fide claim over the land, in which event, it would be for him to establish the same.*
>
> 43. In *Konda Lakshmana Bapuji*[5] this Court has categorically held that the requisite intention can be inferred by necessary implication from the averments made in the petition, the written statement and the depositions of witnesses, like any other fact. *The question which must, therefore, have to be posed and answered having regard to the claim of the land grabber would be that, if on the face of his claim it would appear that he not only had no title, but claimed his possession only on the basis thereof, the same must be held to be illegal. The question in regard to lawful entitlement of the proceedee, therefore, for invoking the charging section plays an important and significant role.*

7 (2007) 11 SCC 714
5 (2002) 3 SCC 258
6 (2004) 7 SCC 398

44. We would like to add that the person's purported belief that he is legally entitled to hold the land and his possession is not otherwise illegal must also be judged not only from the point of time when he entered into the possession or when he had acquired the purported title but also from the point of view as to whether by reason of determination of such a question by a competent court of law, he has been found to have no title and consequently continuance of his possession becomes illegal. If the proceedee against whom a proceeding has been initiated under the provisions of the said Act is entitled to raise the question of adverse possession, which being based on knowledge of a lawful title and declaration of the hostile title on the part of the person in possession, there does not appear to be any reason as to why knowledge of defect in his title and consequently his possession becoming unlawful to his own knowledge would not come within the purview of the term 'land grabbing' as contained in Section 2(*e*) of the Act. The provisions of the Act must be construed so as to enable the tribunal to give effect thereto. It cannot be construed in a pedantic manner which if taken to its logical corollary would make the provisions wholly unworkable. Only because a person has entered into possession of a land on the basis of a purported registered sale deed, the same by itself, in our considered opinion, would not be sufficient to come to the conclusion that he had not entered over the land unauthorisedly, unfairly, or greedily." (emphasis supplied)

32. From the above-extracted observations made in *Mahalaxmi Motors Ltd.* v. *Mandal Revenue Officer*[7], it is clear that the Bench unequivocally approved the ratio of *Konda Lakshmana Bapuji* v. *Govt. of A.P.*[5] and though not stated in so many words, it did not agree with the ratio of the judgment in *Gouni Satya Reddi* v. *Govt. of A.P.*[6] which was decided without noticing the earlier judgment in *Konda Lakshmana Bapuji* v. *Govt. of A.P.*[5]

33. *N. Srinivasa Rao* v. *Special Court*[8] is also a judgment rendered by a two-Judge Bench on the scope of the Special Court's jurisdiction to decide the question whether the alleged land grabber has acquired title by adverse possession. Without noticing the earlier judgment of the coordinate Bench in *Konda Lakshmana Bapuji* v. *Govt. of A.P.*[5], the two-Judge Bench held that the Special Court constituted under Section 7 of the Land Grabbing Act does not have the jurisdiction to decide questions relating to acquisition of title by adverse possession in a proceeding under the Act and the same would fall within the domain of the civil courts. The Bench further held that the learned Special Judge travelled beyond the jurisdiction vested on him under the 1982 Act in deciding that even if the provisions of Section 47 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 were a bar to the transfer of land without the sanction of Tahsildar, the occupants of land had perfected their title by way of adverse possession.

7 (2007) 11 SCC 714
5 (2002) 3 SCC 258
6 (2004) 7 SCC 398
8 (2006) 4 SCC 214

34. In view of the conflicting opinions expressed by the coordinate Benches, the matter was referred to a larger Bench. In *V. Laxminarasamma* v. *A. Yadaiah*[9] the three-Judge Bench approved the view expressed in *Konda Lakshmana Bapuji* v. *Govt. of A.P.*[5] that the Tribunal and the Special Court constituted under the Land Grabbing Act have the jurisdiction to go into the question of acquisition of title by adverse possession and disapproved the subsequent judgment in *N. Srinivasa Rao* v. *Special Court*[8]. While doing so, the three-Judge Bench also distinguished an earlier judgment rendered in *Govt. of A.P.* v. *Thummala Krishna Rao*[1] wherein the provisions of the Encroachment Act were considered and observed: (*A. Yadaiah case*[9], SCC p. 491, paras 42-43)

> "*42.* ... In that case, the principal question, which arose for consideration, was as to whether the property in question which was in possession of the family of one Habibuddin for a long time and, thus, the same had not vested in the Government by reason of a land acquisition proceeding initiated for acquisition of the land for Osmania University. In that case, Osmania University filed a suit for possession which was dismissed on the premise that Habibuddin had perfected his title by adverse possession. Thereafter Osmania University requested the Government of Andhra Pradesh to take steps for summary eviction of the persons who were not in authorised occupation of the said plots. The observations made therein must be held to have been made in the aforementioned factual matrix.
>
> *43.* It is one thing to say that a summary proceeding cannot be resorted to when a noticee resists a bona fide dispute involving complicated questions of title and his right to remain in possession of the land but it is another thing to say that although a Special Court and/or a Tribunal which has all the powers of a civil court would not be entitled to enter into such a contention. *Krishna Rao*[1], therefore, in our opinion has no application to the facts of the present case."

35. In the light of the above analysis of the relevant provisions of the Land Grabbing Act and law laid down by this Court, we shall now consider whether the Division Bench of the High Court was justified in interfering with the orders passed by the Special Tribunal and the Special Court for eviction of the respondents.

36. While deciding the application filed by the appellant, the Special Tribunal referred to the oral as well as documentary evidence produced by the parties including khasra pahani (Ext. A-2) in which the schedule land is recorded in the name of the Government, sketch of the suit land (Ext. A-7) and held that the land belongs to the Government. The Special Tribunal further held that filing of application by Gonda Mallaiah for assignment of land by being treated as landless poor is also indicative of the fact that the

9 (2009) 5 SCC 478 : (2009) 2 SCC (Cri) 711
5 (2002) 3 SCC 258
8 (2006) 4 SCC 214
1 (1982) 2 SCC 134

land belongs to the Government. The plea of the respondents that they have perfected title by long possession was rejected by the Special Tribunal by making the following observations:

(*i*) The documents produced by the respondents are only xerox copies of the notices issued to them from 1965 onwards and the same were not sufficient to establish their open and uninterrupted possession for 30 years, and

(*ii*) The respondents' claim that their possession was open and hostile to the Government is demolished by the fact that they themselves applied to the Government for assignment of the land occupied by them.

37. The Tribunal further held that the factum of development of land for making it cultivable by Gonda Mallaiah does not entitle the respondents to claim right over the land and that their plea for assignment cannot be accepted in the proceedings under the Land Grabbing Act. Accordingly, the Tribunal directed the respondents to hand over possession of the land to the Government.

38. The Special Court minutely considered the entire evidence produced by the parties and held that the land in question is government land and that Gonda Mallaiah and the respondents are land grabbers. The Special Court referred to khasra pahanis for the period from 1959 to 1989 in which the land is recorded in the name of the Government and held that the respondents are not entitled to any right over it merely because they have been cultivating the same. The Special Court doubted the authenticity of the documents produced by the respondents and rejected their plea of having perfected title by adverse possession by making the following observations:

"Even otherwise on the evidence on record we are not satisfied that the respondents established title by adverse possession. The documents filed in support of their plea of adverse possession are xerox copies of the notices said to have been issued under Section 7 of the Land Encroachment Act. Ext. B-3 is one such notice dated 8-8-1962. Ext. B-3 is a xerox copy of the notice. Ext. B-3 does not inspire any confidence as a true one. There is no signature above the word 'Tahsildar'. The survey number is stated to be 42 but is not clear. The extent is said to be Ac. 1-07 gts. When we come to Ext. B-4 which is said to be a notice under Section 7 of the Land Encroachment Act, we find Survey No. 64 and the extent is 20 guntas only. This is also a xerox copy. When we come to the next notice which is Ext. B-5 dated 21-2-1969 purported to have been issued under Section 7 of the Land Encroachment Act, we find Survey No. 42, but the extent is mentioned as Ac. 2.00. We do not find any details clearly in the notice. The xerox copies are not all legible. One important fact which has to be looked into is that some signature and the date 21-2-1969 are very clear when the other recitals are not at all legible. The total extent of the survey number is not mentioned in the relevant column. The person who signed the notice or other details are sadly lacking.

The next notice is Ext. B-6 dated 22-6-1985. This is also a xerox copy. To whom the notice is issued is not clearly legible. But above the word 'r/o name of Mallaiah appears' but the surname is totally different. It is not Gonda Mallaiah, but it is totally different. Here in this xerox copy the total extent of the survey number is shown as Ac. 18-18 gts, but the figures are tampered with and that is clear even to a naked eye. The land in the occupation of the person is mentioned in the relevant column as Ac. 7-12 gts. Ext. B-7 is the reply to Ext. B-6, notice. The reply is submitted by Rakathapu Mallaiah, son of Venkaiah, not by the father of the respondents Gonda Mallaiah. Therefore, it is not clear whether the notice, Ext. B-7 was issued to the father of the respondents or not. It is true that the matter relates to the petition schedule property. It is interesting to see in the reply Ext. B-7 that the respondents stated that they have perfected title by adverse possession and that the provisions of the Land Encroachment Act are inapplicable.

The first respondent as RW 1 stated in his evidence that his father submitted all the original records along with his explanation dated 4-4-1986, that is, Ext. B-1, and therefore the originals are not forthcoming. We are not satisfied with the ipse dixit of the witness. The xerox copies do not inspire any confidence in us as being true copies of the originals. It is true that when we come to Ext. B-1, notice issued in the month of March 1986 a reply was given by the respondents' father/G. Mallaiah. We have referred to the statement contained therein in the foregoing paragraphs wherein he requested that the necessary recommendations may be made to the competent officer to grant patta to the petition schedule property. Therefore, we are not included, for the reasons mentioned above, that the earlier documents Exts. B-3 to B-5 are genuine.

If we eschew Exts. B-3 to B-5 there is absolutely no evidence to show that Shri G. Mallaiah, the father of the respondents and the respondents have been in possession of the petition schedule property prior to 1970. The documents filed in support of their plea of adverse possession viz. Exts. B-8 to B-80 relate to a period from 15-12-1977 to the date of the filing of the petition or even thereafter. The documents do not clearly relate to the petition schedule property and they are all xerox copies only. Originals have not been produced before the court. *Even if the documents Exts. B-19 to B-25 are taken into consideration, they do not establish the possession of the respondents or their predecessors in title prior to 1977. The said period will not satisfy the required period prescribed for acquiring title by adverse possession.* Therefore, we are not inclined in accordance with law invoking the provisions of Act 12 of 1982, it cannot be said that its action is either arbitrary or capricious."

(underlining* is ours)

39. The Special Court then considered the respondents' plea that dropping of proceedings under the Encroachment Act amounts to permitting

* **Ed.**: Herein italicised.

them to continue possession and rejected the same by relying upon the judgment of this Court in *Govt. of A.P.* v. *Thummala Krishna Rao*[1].

40. Likewise, the plea of the respondents that their possession was permissive and they cannot be treated as land grabbers because they are in occupation of the land for many decades and are paying the land assessment was rejected by the Special Court by relying upon order dated 15-12-1994 passed in LGC No. 106 of 1989 in which it was held that in view of Rule 2 of the Andhra Pradesh (Telangana Area) Land Revenue Rules, any person desiring to take up unoccupied land is required to submit an application to the Tahsildar and he shall not enter upon the land without obtaining written permission from the Tahsildar and that any person entering into possession without such permission cannot claim to be sivaijamaidar. The Special Court opined that the possession of the respondents cannot be treated as permissive because notices, Ext. B-2 and Ext. B-6 were issued to them before filing application under the Land Grabbing Act and in any case, their plea of permissive possession was destructive of their claim of having acquired title by adverse possession.

41. During the pendency of the writ petition, the Division Bench of the High Court appointed two sets of Advocate Commissioners to ascertain the nature of the schedule land, considered their reports and concluded that the land occupied by Gonda Mallaiah and his successors is an agricultural land. The High Court observed that the respondents herein are in possession and enjoyment of the land for last many years and silence on the part of the authorities concerned right from 1959 up to the filing of petition before the Special Tribunal in 1990 clearly indicates that they were satisfied with the stand of the respondents and their predecessor that they are entitled to assignment of the schedule land by being treated as landless poor. The High Court was of the view that if the authorities were serious to evict Gonda Mallaiah or the respondents then they would have taken appropriate steps and would not have allowed them to continue in possession for more than 50 years and collected revenue from them.

42. The High Court then considered the respondents' plea of having acquired title by adverse possession, referred to some judicial precedents on the subject and held:

> "The evidence produced by the State itself clearly established that the petitioners have perfected their title over the schedule land by way of adverse possession applying the principle of 'tacking'. Thus possession of the petitioners over Ac. 5.00 of the schedule land is not without lawful entitlement. The evidence available does not suggest that they are land grabbers and the schedule land has been grabbed by them. On the other hand, they entered the land as landless persons and they requested the Government for assignment by virtue of their longstanding possession and improvements made to the land and paying tax to the Government.

1 (1982) 2 SCC 134

They proved that they are lawfully entitled to continue in possession and enjoyment of the land."

43. The High Court then referred to the often quoted judgment of this Court in *Syed Yakoob* v. *K.S. Radhakrishnan*[10] on the scope of the writ of certiorari and concluded:

> "It has come in evidence that originally the State was the owner of the schedule land. But it allowed the petitioners and their predecessors to enjoy the schedule land as their own peacefully, continuously and to its knowledge for more than the statutory period. The petitioners clearly stated in their counter filed before the Special Tribunal as to how and when their adverse possession commenced and the nature of their possession of which the authorities are quite aware. The petitioners' possession over the schedule land is hostile to the State as they have established the ingredients, namely, the nature of possession as adequate, in continuity, publicity and extent. The authorities did not object for such continuous possession and enjoyment. As mentioned earlier, the principles of adverse possession by tacking will apply to the case of the petitioners. Thus, the petitioners have perfected their title over the schedule property by adverse possession."

44. In our view, even though by making reference to the judgment of this Court in *Syed Yakoob* v. *K.S. Radhakrishnan*[10], the High Court has given an impression that it was aware of the limitations of certiorari jurisdiction under Article 226 of the Constitution of India, a critical analysis of the impugned order makes it clear that the High Court exceeded its jurisdiction and committed a serious error by interfering with the well-articulated and well-reasoned concurrent findings recorded by the Special Tribunal and the Special Court that Gonda Mallaiah had illegally occupied the government land and after his death, the respondents continued with the illegal possession and as such they were liable to be treated as land grabbers within the meaning of Section 2(*d*) of the Land Grabbing Act and that they have failed to prove that their possession was open and hostile to the Government so as to entitle them to claim title over the schedule land by adverse possession.

45. The respondents did not produce any affirmative evidence before the Special Tribunal regarding the point of time when Gonda Mallaiah occupied the land and started cultivation. Instead, they relied upon the notices issued under Section 7 of the Encroachment Act and pleaded that the proceedings initiated under that Act will be deemed to have been dropped because no order was passed for eviction of their father by treating him an encroacher of the government land. The Special Court has considered this issue in detail and assigned cogent reasons for doubting the authenticity of the documents produced by the respondents in support of their plea. The High Court completely overlooked the observations made by the Special Court on this issue and decided the case by presuming that the competent authority had taken a conscious decision to allow Gonda Mallaiah to continue his occupation of the government land.

10 AIR 1964 SC 477

46. In our considered view, the approach adopted by the High Court was ex facie erroneous because the absence of final order in the proceedings initiated under the Encroachment Act cannot lead to an inference that the authority concerned had recognised the possession of Gonda Mallaiah over the schedule land. That apart, even if this Court was to presume that the proceedings initiated against Gonda Mallaiah under the Encroachment Act had been dropped, the said presumption cannot be overstretched for entertaining the respondents' claim that their possession was open and hostile qua the true owner i.e. the Government. The payment of land revenue by Gonda Mallaiah and/or the respondents and making of applications by them to the Government for assignment of the schedule land or regularisation of their possession, completely demolish their case that their possession was open and hostile and they have acquired title by adverse possession.

47. In this context, it is necessary to remember that it is well-nigh impossible for the State and its instrumentalities including the local authorities to keep everyday vigilance/watch over vast tracts of open land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the State apparatus for getting their occupation/possession and construction regularised. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty-bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give an upper hand to the encroachers, unauthorised occupants or land grabbers.

48. In *State of Rajasthan* v. *Harphool Singh*[11] this Court considered the question whether the respondents had acquired title by adverse possession over the suit land situated at Nohar-Bhadra Road at Nohar within the State of Rajasthan. The suit filed by the respondent against his threatened dispossession was decreed by the trial court with the finding that he had acquired title by adverse possession. The first and second appeals preferred by the State Government were dismissed by the lower appellate court and the High Court respectively. This Court reversed the judgments and decrees of the courts below as also of the High Court and held that the plaintiff-respondent could not substantiate his claim of perfection of title by adverse possession. Some of the observations made on the issue of acquisition of title by adverse possession which have bearing on this case are extracted below: (SCC p. 660, para 12)

> "*12.* So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to

11 (2000) 5 SCC 652

immovable property and conferring upon a third-party encroacher title where he had none. The decision in *P. Lakshmi Reddy* v. *L. Lakshmi Reddy*[12] adverted to the ordinary classical requirement—that it should be *nec vi, nec clam, nec precario*—that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus."

49. A somewhat similar view was expressed in *A.A. Gopalakrishnan* v. *Cochin Devaswom Board*[13]. While adverting to the need for protecting the properties of deities, temples and Devaswom Boards, the Court observed as under: (SCC p. 486, para 10)

"*10.* The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/ shebaits/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

50. Before concluding, we may notice two recent judgments in which law on the question of acquisition of title by adverse possession has been considered and reiterated. In *Annakili* v. *A. Vedanayagam*[14] the Court observed as under: (SCC p. 316, para 24)

"*24.* Claim by adverse possession has two elements: (*1*) the possession of the defendant should become adverse to the plaintiff; and (*2*) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title."

12 AIR 1957 SC 314
13 (2007) 7 SCC 482
14 (2007) 14 SCC 308

51. In *P.T. Munichikkanna Reddy* v. *Revamma*[15], the Court considered various facets of the law of adverse possession and laid down various propositions including the following: (SCC pp. 66 & 68, paras 5 & 8)

> "*5.* Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. *It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. …*
>
> * * *
>
> *8.* … to assess a claim of adverse possession, two-pronged enquiry is required:
>
> *1.* Application of limitation provision thereby jurisprudentially 'wilful neglect' element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.
>
> *2.* Specific positive *intention to dispossess* on the part of the adverse possessor effectively shifts the title already distanced from the paper-owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as *intent to dispossess* is an express statement of urgency and intention in the upkeep of the property."
>
> (emphasis in original)

52. In view of above discussion, we hold that the respondents miserably failed to establish that they had acquired title over the schedule land by adverse possession and the High Court was not at all justified in upsetting the orders passed by the Special Tribunal and the Special Court.

53. In the result, the appeal is allowed, the impugned order is set aside and the writ petition filed by the respondents before the High Court is dismissed. As a corollary, the orders passed by the Special Tribunal and the Special Court shall stand automatically restored. Within two months from today, the respondents shall hand over vacant possession of the schedule land to an officer not below the rank of Additional Collector, who shall be nominated by the District Collector, Ranga Reddy District. Needless to say that if the respondents fail to hand over vacant possession of the schedule land to the officer nominated by the District Collector then he shall take possession of the land and, if necessary, use appropriate force for that purpose.

54. With a view to ensure that the respondents are not able to manipulate the State apparatus for continuing their illegal occupation of schedule land in question, we direct the Government of Andhra Pradesh and its functionaries not to regularise their possession. The respondents shall also not be entitled to invoke jurisdiction of any court including the High Court for securing an order which may result in frustrating implementation of this Court's order.

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15 (2007) 6 SCC 59

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MANU/UP/1324/2012

Equivalent Citation: 2012(6)ADJ117

IN THE HIGH COURT OF ALLAHABAD

Civil Misc. Writ Petition No. 651 of 1977

Decided On: 24.04.2012

Appellants: **Neur**
Vs.
Respondent: **Additional Collector and Ors.**

Hon'ble Judges/Coram:
Sanjay Misra, J.

Counsels:
For Appellant/Petitioner/Plaintiff: K.R. Sirohi, H.S. Nigam, A.N. Singh, M.C. Tewari, Ramesh Pundir and Smt. Rekha Pundir

For Respondents/Defendant: S.L.Yadav, Faujdar Rai, C.K. Rai, A.K. Srivastava, Swaraj Prakash and C.S.C.

Case Note:
Property - Adverse possession - U.P. Land Reforms (Supplementary) Act 1952 - Deputy Director of Consolidation held that Respondent recorded in Khasra for more than 12 years which shows that he had been in possession of plots in dispute and Petitioners had failed to prove that they were in possession over land - Hence, this writ Petition - Whether, Respondent was in adverse possession for more than 12 years - Held, while applying provisions of Act to entry of Respondent in 1360 Fasli it was not clear that his name came by an order of Supervisor Kanungo who expunged name of father of Petitioners - Such order of Supervisor Kanungo was never produced - No reason had been brought forward to show that upon expunging name of father of Petitioners - Possession of Respondent during life time of father of Petitioners was not reason given by Deputy Director of Consolidation to record that he had obtained Sirdari rights on date of vesting - Deputy Director of Consolidation had recorded that after date of vesting Respondent continued to be in possession which was hostile to Petitioners - Entry of Respondent's name in revenue record was forged entry without any order in accordance with law therefore his claim to be in possession was to be an unauthorized claim having no legal backing - When Respondent came into possession unauthorizedly he was not in possession under any agreement or right - Respondent on other hand never came in possession by virtue of any transaction or settlement - Therefore when Respondent's possession was based on an illegal entry in revenue records and even basis of that entry was not brought out or proved then it was forged entry - Hence Respondent was not entitled to claim Sirdari rights on basis of his claim of adverse possession - Therefore impugned order passed by Deputy Director of Consolidation was set aside to extent where he had directed Respondent's name to be recorded in revenue records - Writ Petition allowed. Ratio Decidendi"When person is in illegal possession such illegal possession shall not be converted into legal title."

JUDGMENT

Hon'ble Sanjay Misra, J.

1. This writ petition has been filed against the order dated 10.2.1977 passed by the Deputy Director of Consolidation, Gorakhpur in Revision No. 48/76 (Badri v. Neur and others) whereby the revision filed by the respondent Badri has been allowed and it has been ordered that the name of Badri be recorded as Sirdar over the plots in dispute. During the pendency of this writ petition the petitioner No. 1 Neur and petitioner No. 2 Laley died and the heirs and legal representatives have been brought on record. The respondent No. 4 Badri also died and his heirs and legal representatives have been brought on record.

2. The petitioner's claim to be Sirdars of plot Nos. 223/40, 224/40, 261/25, 267/34, 273/48, 295/63, 300/32, 301/35 situated in village Ramnagar, Tappa Katehra, Pargana Haveli, Tehsil Maharajganj, District Gorakhpur. According to them the name of respondent No. 4 Badri was recorded in the revenue record in the basic year. The petitioner filed objection under Section 9 of the U.P. Consolidation of Holdings Act claiming that the land in question is ancestral property of the petitioner. As such the name of Badri (respondent No. 4) was wrongly recorded in the revenue papers. The Consolidation Officer by his order dated 19.5.1975 rejected the objection filed by the petitioner. The Consolidation Officer had framed the issue as to whether the petitioner Neur and others have any interest over the land in question.

3. While considering the issue the Consolidation Officer took into account statement of Sitaram, Baran and Ram Dulare who stated that the petitioner was in possession over the plot in dispute. The Consolidation Officer considered the extract of Khatauni from 1360 Fasli to 1372 Fasli. The Consolidation Officer decided the issue against the petitioner and held that the name of Badri in the revenue record is coming from 1360 Fasli when the zamindar had settled the land in dispute. He found that under the provisions of U.P. Land Reforms (Supplementary) Act 1952 (U.P. Act No. 31 of 1952) records could be corrected on the basis of cultivatory possession of the land as on 1359 Fasli and therefore the entry made in the agreement register in pursuance of an order passed under U.P. Act No. 31 of 1952 would be deemed to be correct unless the party challenging it proves it to be wrong. The Consolidation Officer found that Badri was in possession since long and his name was entered in the revenue record correctly but since no objection/suit had been filed for more than 12 years by the petitioner the possession of Badri cannot be held to be wrong and his name in the basic year would entitle him to Sirdari rights.

4. Feeling aggrieved the petitioner filed Appeal No. 399 before the Settlement Officer Consolidation who has allowed the appeal of the petitioner and directed the name of Badri (respondent No. 4) to be expunged from the records. The Settlement Officer Consolidation recorded that from 1353 Fasli to 1359 Fasli the land in question was recorded in the name of Dulam in column 6. In 1360 Fasli Dulam father of the petitioners is entered as Sirdar but in the Khatauni of 1360 Fasli there is a mutation entry indicating that under order of Supervisor Kanungo the name of Dulam has been expunged from the agreement register and Badri has been recorded as Sirdar. The Settlement Officer Consolidation while considering the mutation entry in the Khatauni of 1360 Fasli held that no such register has been produced before him nor the order of the Supervisor Kanungo has been produced. He held that the Supervisor Kanungo had no right to expunge the name of Dulam the father of the petitioner from the Khatauni of 1360 Fasli. He has disagreed with the finding of the Consolidation Officer and held that when entry is made in the agreement register then the zamindar is always a party because it is only the zamindar who can settle the land in favour of any person. He further held that if the entry in the agreement register is believed then it will amount to a Sirdar conferring Sirdari rights on another person which is

not permissible in law. He further held that when there is no evidence on record to indicate that prior to abolition of zamindari although Dulam was recorded then the zamindar could not settle the land with Badri since Sirdari rights are acquired and not conferred. For the aforesaid reasons he found that the name of Badri was wrongly entered in the revenue record and he has not obtained any Sirdari rights hence such incorrect entry cannot be maintained even if it is existing for a long time after the date of vesting and hence he set aside the entry in favour of Badri.

The Settlement Officer Consolidation held that Badri was in illegal possession. He allowed the appeal of the petitioner and directed the name of Badri to be expunged and that of the petitioner who is son of Dulam be recorded as Sirdar.

5. The respondent No. 4 filed a Revision and the Deputy Director of Consolidation recorded that Dulam has been shown as tenant in Column 6 of the Khatauni 1359 Fasli and thereafter in 1360 Fasli he was recorded as Sirdar which is after abolition of zamindari and the order of mutation in favour of Badri was passed by the Supervisor Kanungo. The Deputy Director of Consolidation held that there was no authority with the Supervisor Kanungo to pass an order for changing the entries nor there is any evidence as to how Badri's name came to be recorded as Sirdar and hence he agreed with the decision given on this point by the Settlement Officer Consolidation.

6. The Deputy Director of Consolidation then considered that Badri matured his right as Sirdar on the basis of adverse possession. He has recorded a finding that Badri is recorded in the Khasra for more than 12 years which shows that he has been in possession of the plots in dispute and the petitioners have failed to prove that they were in possession over the land at any point of time which fact is also clear from the Khasra where the petitioners name does not find place for more than 12 years. The Deputy Director of Consolidation considered the irrigation slips and land revenue receipts filed by Badri and found them to be good piece of evidence on the point of possession and since Badri had filed such land revenue receipts and irrigation slips his possession has been proved. The Deputy Director of Consolidation considered the argument of the petitioners that the possession of Badri was not adverse to the petitioners since Badri had illegally obtained his entry after Dulam and therefore possession obtained illegally could not be adverse. The Deputy Director of Consolidation did not agree with the aforesaid submission and found that the possession of Badri was not permissive but it was adverse for more than 7 years up to the basic year and hence Badri has obtained Sirdari rights.

7. From the above finding recorded by the Consolidation authorities and in view of the submission made by learned counsel for the petitioner it appears that the claim of the petitioners over the plots in dispute is on the basis that they have inherited the land from their ancestors. The record indicates that in the basic year Badri was recorded and prior there to the father of the petitioners namely Dulam was recorded from 1353 to 1359 Fasli in Column 6. The entry of Badri (respondent No. 4) has come by virtue of some order passed by the Supervisor Kanungo under the provisions of U.P. Act No. 31 of 1952. The Settlement Officer Consolidation has recorded that no such order of the Supervisor Kanungo has been produced before him nor the agreement register has been produced before him and hence he held that the name of Badri was wrongly recorded in the revenue record and the property being ancestral of the petitioners they were to be recorded. The Deputy Director of Consolidation has agreed with such finding of the Settlement Officer Consolidation but he has proceeded to allow the revision of Badri (respondent No. 4) on the basis that after 1360 Fasli Badri was in possession of the land in question for more than 12 years and such possession was reflected from the Khasra where the petitioners name was not recorded.

8. Learned counsel for the petitioner has placed reliance on a decision of the Supreme Court in the case of S.M. Karim v. Bibi Sakina, MANU/SC/0236/1964 : AIR 1964 (SC) 1254. He states that in the aforesaid case the plea was that Syed Aulad Ali has purchased the property in the name of his son-in-law Hakir Ali benami but Syed Aulad Ali continued in possession of the property but did not assert that his possession was hostile against his son-in-law Hakir Ali and therefore when adverse possession was not hostile then Syed Aulad Ali did not acquire an absolute title by adverse possession.

9. He has placed reliance on a decision of the Supreme Court in the case of Smt. Sonawati and others v. Sri Ram and another, 1968 RD 51, to state that when there is entry in the revenue record in the remarks column then such entry in the Khasra in the remarks column cannot entitle the person to claim that he has established his rights as an Adivasi and that person claiming an entry to be evidence and having being made under the provisions of U.P. Act No. 31 of 1952 then a person who claims status of an Asami or Adivasi must establish that he was in cultivatory possession of the land during 1359 Fasli and such possession must be lawful and must be a lawful right vested in him to be in possession.

10. He has placed reliance on a decision of the Supreme Court in the case of State of Haryana v. Mukesh Kumar and others, 2012 (115) RD 349, to state that the Supreme Court held that when a person is in possession for more than 12 years illegally then such illegal possession cannot be converted into a legal title.

11. He has place reliance on a decision of this Court in the case of Ghasitey v. Deputy Director of Consolidation, Gonda Camp Bahraich and others, MANU/UP/3673/2011 : 2012 (115) RD 54 and submits that an entry in Column 9 of the form if it is made not in accordance with law then bhumidhari rights cannot be claimed on the basis of such unlawful entry.

12. On the other hand learned counsel for the respondents has placed reliance on a decision of this Court in the case of Bharit and others v. Board of Revenue U.P. and others, 1972 RD 451, to submit that under the U.P. Tenancy Act 1939 even if the document of sale is invalid and he gets no title under it his possession will not be referable to any legal title but if he has been in possession for more than 2 years it would be adverse to the transferor and hence would not be permissive possession.

13. While referring to the judgment of this Court in the case of Dwarika v. Desh Raj Singh, 1980 All CJ 60 and states that when a person enters into a possession in lieu of ancestor and for an amount advanced to him then even if the transaction was illegal the possession would be adverse.

14. Learned counsel for the respondents has placed reliance on a decision of the Supreme Court in the case of Kalika Prasad and others v. Chhatrapal Singh (Dead) By LRS, 1997 All CJ 584 and submits that when the party came in possession as a power of attorney which was later on cancelled but no attempt was made to eject him his possession remained uninterrupted possession for over 12 years thus he perfected his title by prescription.

15. Learned counsel for the respondents has also relied on a decision of this Court in the case of Smt. Jannat and others v. VIIth Additional District Judge, Agra and others, MANU/UP/2234/2006 : 2007 (102) RD 167 and submits that after a sale has been confirmed and sale certificate has been executed and an application for possession could be made within one year but when the application for possession was made after expiry of the period of limitation it would be barred by time.

16. Learned counsel has relied on a decision of this Court in the case of Smt. Sukhdei and another v. State of U.P. and others, 2009 All CJ 1518 and submits that when the view taken by the Court below is reasonable the High Court should not interfere with the findings of fact merely on the ground that another view is also plausible.

17. From the aforesaid decisions it appears that the question whether Badri was in adverse possession for more than 12 years after 1360 Fasli is the main question to be decided since on the other issues the Deputy Director of Consolidation has agreed with the finding recorded by the Settlement Officer Consolidation.

18. The Deputy Director of Consolidation under the impugned order has recorded that the Khasra entry for more than 12 years shows that Badri was in possession of the plot in dispute hence his possession was adverse to the petitioners. The facts of this case indicate that initially Dulam the father of the petitioners was recorded in the revenue records and the petitioners claim the property to be ancestral. There is no issue raised in the present proceedings that any transfer of title had taken place during the life time of Dulam or even thereafter. The name of Badri (respondent No. 4) came in Column 6 of the Khatauni 1360 Fasli for the first time when the name of Dulam was directed to be expunged by an order of the Supervisor Kanungo. Under U.P. Act No. 31 of 1952 it has been provided that records could be corrected on the basis of cultivatory possession of land as on 1359 Fasli and once such records are corrected by the Supervisor Kanungo such entry in the agreement register is deemed to be correct unless the party challenging it proves it to be wrong. Such provisions under U.P. Act No. 31 of 1952 requires the party challenging and entry made in the register to prove it to be wrong.

19. In the present case while applying the provisions of U.P. Act No. 31 of 1952 to the entry of Badri in 1360 Fasli it is not clear that his name came by an order of the Supervisor Kanungo who expunged the name of Dulam the father of the petitioners. Such order of Supervisor Kanungo was never produced. No reason has been brought forward in these proceedings to show that upon expunging the name of Dulam his sons i.e. the petitioners were not required to be recorded. Badri claimed to be in cultivatory possession. The possession of Badri during the life time of Dulam is not a reason given by the Deputy Director of Consolidation to record that he has obtained Sirdari rights on the date of vesting. The Deputy Director of Consolidation has recorded that after the date of vesting Badri continued to be in possession which was hostile to the petitioners.

20. In case Badri was in possession illegally without any legal right and admittedly not being a co-sharer then such possession could not be adverse to the petitioners who claim to be owners since the legal right over the land in question was devolving upon the petitioners from their father Dulam. In the event Badri's possession was illegal without any right or title then it was not hostile to the petitioners hence he could not develop rights by adverse possession. Clearly in the present case Badri was recorded in possession of the land in question in 1360 Fasli for the first time and never before. This entry came after the date of vesting. How it came has not been proved by producing any evidence. The only plea is that the name was mutated in proceeding under U.P. Act No. 31 of 1952. The adverse possession claimed by Badri is for the reason that he was recorded in the Khasra for 12 years has to be seen on the basis that Dulam's name was recorded in the Khatauni 1353 Fasli to 1359 Fasli in Column 6.

21. Insofar as the entry made by the Supervisor Kanungo under the provisions of U.P. Act No. 31 of 1952 is concerned the person who has obtain an entry in the

Khasra in the remarks column can claim Adivasi rights or status of Asami only if he can establish that he was in lawful possession and a lawful right vested in him. In the present case there is no such evidence. The possession of Badri was recorded from 1360 Fasli. He had no lawful right vested in him prior there to. Hence he could not claim Adivasi rights or status as Asami only on the basis of a suspicious entry recorded in the Khasra by the Supervisor Kanungo under U.P. Act No. 31 of 1952. Even this entry was not proved to have been validly made and no evidence or any order of the Supervisor Kanungo was brought on record. The entry had no legal backing it was a managed entry which did not reflect the correct position.

22. In the case of Bharit (supra) a transaction of sale had taken place and the party came in possession and continued in possession for more than 2 years. It was held that even if the sale was invalid and the possession was not referable to the sale-deed then the possession would be adverse. In the present case there is no circumstance of any sale or transfer so as to make the claim of possession by Badri adverse to the transferor. There is also no averment that the possession of Badri was in lieu of an amount advanced by him. Therefore no benefit can be derived by him from the decision in the case of Dwarika (supra).

23. In the case of Kalika Prasad (supra) possession was taken by the attorney under a power of attorney. The power of attorney was subsequently cancelled but even then for more than 12 years no efforts were made to eject him. It was held that the attorney remained in uninterrupted possession for over 12 years after cancellation of power of attorney hence he perfected his title by prescription. In the present case no such circumstance exists.

24. The decision in the case of Smt. Jannat (supra) also is quite distinguishable. It related to a sale and its confirmation and even then possession was not taken for one year as prescribed under the Limitation Act. The application for possession after expiry of the period of limitation was clearly barred by time. In the present case the petitioners filed objection under Section 9 of the U.P. Consolidation of Holdings Act since in the basic year the name of Badri was recorded on the basis of an entry existing since 1360 Fasli. Therefore when the title was to be decided under the U.P. Consolidation of Holdings Act the objection was maintainable. There was no bar of limitation when the consolidation operations were notified in the village.

25. This is not a case where two views are possible. Therefore the submission that this Court in exercise of writ jurisdiction may not interfere in the impugned order because two views are possible is quite a misplaced submission.

26. In the present case Badri had no interest in the land in question prior to 1360 Fasli. In 1360 Fasli the name of Dulam the father of the petitioners was recorded in the revenue record. Badri got his name mutated on the strength of some order passed by the Supervisor Kanungo. Such order is not available on record. It was never produced. Hence the very basis of the entry does not exist. Under such circumstances the entry of Badri's name in the revenue record was a forged entry without any order in accordance with law. Therefore his claim to be in possession was to be an unauthorised claim having no legal backing. When he came into possession unauthorisedly he was not in possession under any agreement or right. In the case of Bharit (supra), Kalika Prasad (supra) and Smt. Jannat (supra) they all obtained possession by virtue of a transaction and then continued in possession even though the transaction did not materialize or fruitify. Hence their possession became hostile and they got the benefit of being in adverse possession. Badri on the other hand never came in possession by virtue of any transaction or settlement. He claimed possession on the basis of a forged entry in the revenue record. The decision in the

case of Smt. Sonawati has clearly held that even an entry recorded under U.P. Act No. 31 of 1952 has to be lawful and there must be a legal right vested in the person to be in possession. In Mukesh Kumar (supra) the Supreme Court held that when a person is in illegal possession such illegal possession cannot be converted into a legal title. In Ghasitey (supra) it was held that an unlawful entry cannot give bhumidhari rights.

27. Therefore when Badri's possession was based on an illegal entry in the revenue records and even the basis of that entry was not brought out or proved then it was a forged entry. His possession thereafter was illegal hence he could not mature rights by adverse possession. He never came in possession of the land under any transaction or agreement with anybody hence there was no question of his possession being hostile to the true owner.

28. Clearly Badri was not entitled to claim Sirdari rights on the basis of his claim of adverse possession. The possession of Badri was not hostile. It is therefore held that Badri could not claim Sirdari rights on the basis of his claim of being in adverse possession.

29. For the aforesaid reasons the impugned order dated 10.2.1977 passed in Revision No. 48/76 (Badri v. Neur and others) by the Deputy Director of Consolidation, Gorakhpur is set aside to the extent where he has directed Badri's name to be recorded in the revenue records. The findings on adverse possession in favour of Badri (respondent No. 4) are set aside.

30. The writ petition is allowed. No order is passed as to costs.

MANU/UP/1914/2014

Equivalent Citation: 2014(9)ADJ506

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IN THE HIGH COURT OF ALLAHABAD (LUCKNOW BENCH)

Misc. Bench No. - 2538 of 2005

Decided On: 15.10.2014

Appellants: **Virendra Kumar Dixit**
Vs.
Respondent: **State of U.P.**

Hon'ble Judges/Coram:
D.P. Singh and Arvind Kumar Tripathi-II, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: R.D. Tewari and Vijyant Nigam

For Respondents/Defendant: C.S.C., Ajaay Kumar Singh and K. Chandra

Case Note:
Civil - Possession - Present petition filed to direct opposite parties not to interfere in peaceful possession of Petitioners in plot purchased through registered sale deed - Whether opposite parties not to interfere in peaceful possession of Petitioners in plot purchased - Held, evident that Authority demolished boundary wall of Petitioners, and that too, without any information or notice to Petitioners - Facts revealed that there was road between acquired land of Village Mohibullapur and land of Village Faizullaganj - Plots purchased by Petitioners fall within limits of village Faizullaganj - Admittedly, land of Village Faizullaganj had not been acquired - Opposite parties had not challenged title of Petitioners ove land of Plot, which Petitioners had purchased - Case of Respondent-Authority that boundary wall was encroachment over acquired land of Village Mohibullapur, was not based on any fact, and was liable to be thrown out - Petitioners were entitle to damages on account of pecuniary loss or injury, harassment, mental agony or oppression meted to them by illegal action of Authority - Authority had no right to demolish the boundary wall without adopting due procedure of law - Directed Respondent not to interfere with peaceful possession of Petitioners and saddled with consequential compensatory costs to Petitioner - Petition allowed. [paras 19, 20 and 23] f

JUDGMENT

Arvind Kumar Tripathi-II, J.

1. Petitioners Dr. Virendra Kumar Dixit and Smt. Alka Dixit purchased two plot Nos. 11 and 12, which fall in Khasrea Nos. 348, 349, 350 and 351 of village Faizullaganj, District Lucknow through registered sale deeds. After execution of sale deeds, the petitioners got possession and they constructed boundary wall covering these plots. The boundary of village Faizullaganj abuts the boundary of village Mohibullapur, District Lucknow. Certain land of village Mohibullapur was acquired in favour of Lucknow Development Authority for constructing Sector 'B' of Priyadarshani Colony. As per layout plan of Sector 'B', Priyadarshani Yojana, Sitapur Road, Lucknow (Annexure-1 to the Writ Petition), 6 meter wide road is situated in between the plots of petitioners' and the chunk of land acquired in favour of Lucknow Development

Authority.

2. The petitioners have pleaded that the personnel of Lucknow Development Authority were harassing the inhabitants of Village Faizullaganj on the pretext that the land acquired in favour of Lucknow Development Authority is part of Priyadarshani Nagar Yojana, Mohibullapur. Thus, the Society, 'Jan Kalyan Lucknow Sahkari Grih Nirman Samiti, Ltd. Lucknow' from whom the petitioners had purchased the land of aforesaid plots, moved an application for demarcation under section 41 of the U.P. Land Revenue Act. The land was demarcated and Khasra Nos. 349, 350, 351 of Village Faizullaganj were demarcated, and it was found that there is a road towards east of plot Nos. 349, 350 and 351 of Village Faizullaganj. Village Mohibullapur is located towards east of the above road. Without denying the correctness of the demarcation report and order dated 1.1.2008 passed by the Assistant Collector, one fine morning in the month of March 2005, the officials of Lucknow Development Authority in the garb of digging a 'Nala' and also on the pretext of demolishing illegal encroachments, demolished the boundary wall of the petitioners, and that too, without any information or notice to the petitioners.

3. Aggrieved by the action of the Lucknow Development Authority, the petitioners have filed the present petition praying for the following substantive relief:-

> (i) to issue a writ order or direction in the nature of Mandamus directing the opposite parties not to interfere in the peaceful possession of the petitioners in plot no. 11 and 12 purchased through registered sale deed dated 19.8.97 from Jan Kalyan Cooperative Housing Society, Lucknow contained in Annexure no. 2 and 3 to this writ petition without acquisition and notification under Land Acquisition Act.
>
> (ii)...
>
> (iii)...

4. By filing a counter affidavit, it was not denied that the petitioners are the owners of plot Nos. 11 and 12 comprising of Khasra Nos. 348, 349, 350 and 351 situated in Village Faizullaganj. It was also not denied that an application was moved for demarcating the land under section 41 of the U.P. Land Revenue Act. It was also specifically admitted that land falling in Khasra Nos. 349, 350 and 351 of Village Faizullaganj is situated in such a way that boundaries of Village Mohibullapur meet the limits of Village Faizullaganj. It was also specifically admitted in para 9 of the counter affidavit that Khasra Nos. 348, 349, 350 and 351 of Village Faizullaganj are situated on the boundaries of Village Mohibullapur and towards east of the petitioners plots, there is a road. On the east of the road, land of Village Mohibullapur is situated and the land of Village Faizullaganj is on the west side of the road. It was also admitted that the demarcation was approved by the District Collector on 1.1.2008 on the basis of the demarcation report dated 12.12.2007. Apart from that, it was stated in the counter affidavit that the Lucknow Development Authority is entitled to retain possession over its acquired land and is also entitled to remove illegal encroachments from the land. It was further submitted that the Lucknow Development Authority has started development of land acquired in its favour in Village Mohibullapur and a Nala was being constructed over the land of Khasra Nos. 388 and 394, to which the petitioners had no concerned.

5. Heard Sri. Vijyant Nigam, learned counsel for the petitioners and learned Standing Counsel appearing for the Lucknow Development Authority.

6. It was submitted by learned counsel for the petitioners that from a perusal of the

statement made in the counter affidavit it is abundantly clear that there is a road between the land of Village Mohibullapur and Village Faizullaganj. To the east of the road is Village Mohibullapur and to the west of the road is Village Faizullaganj. Hence, there was no chance of encroachment by the petitioners over the land of Village Mohibullapur as there was an intervening road. It was further argued that since the Lucknow Development Authority has admitted that it has no concern with the land of Village Faizullaganj, hence the boundary wall which was constructed by the petitioners around their plots, by no stretch of imagination, can be considered to be an encroachment on the land of Village Mohibullapur which has been acquired in favour of Lucknow Development Authority.

7. Further submission of learned counsel for the petitioners is that even though for the sake of arguments, it be treated that the boundary wall were constructed on the land of Village Mohibullapur which was acquired in favour of Lucknow Development Authority then, too, the Lucknow Development Authority ought to have given a notice for removal of alleged encroachment and only thereafter should have proceeded in accordance with law. In any case, the Lucknow Development Authority does not have any right to demolish the boundary wall without adopting the due process of law.

8. Per contra, it was submitted by learned counsel for Lucknow Development Authority that since the boundaries of two villages are adjacent, hence the boundary wall which was constructed by the petitioners was an encroachment over the land acquired in favour of Lucknow Development Authority. It was further submitted that by developing the acquired land of Village Mohibullapur, a Nala was being constructed, and in that eventuality, boundary wall might have been demolished as the Lucknow Development Authority, who is entitled to retain the possession over its acquired land and also entitled to removed the illegal encroachments over such land.

9. In the case of Ram Ratan and others Vs. State of Uttar Pradesh, reported in MANU/SC/0160/1976 : 1977 (1) SCC 188, question cropped up before Supreme Court with regard to right of private defence of trespasser against true owner. Their Lordships held that true owner has no right to dispossess the trespasser by use of force in case trespasser was in possession in full knowledge of the true owner. Observation made by Hon'ble the Supreme Court is reproduced as under:-

> "It is well settled that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under, the law. "

10. In the case of S.R. Eiaz Vs. T.N. Handloom Weavers' Cooperative Society Ltd., reported in MANU/SC/0122/2002 : (2002) 3 SCC 137 Hon'ble the Supreme Court upheld the citizen's right to protection of property conferred by Article 300A read with Article 21 of the Constitution of India. Their Lordships held that only dispossession in due course of law can be accorded legitimacy by the courts. Forcible dispossession by influential persons and musclemen cannot be condoned. It shall be appropriate to reproduce the observation made by Hon'ble the Supreme Court which is as under:-

> "In our view, if such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe nor the citizens can protect their properties. Law frowns upon such conduct. The Court accords legitimacy and legality only to possession taken in due course of law. If such actions are

condoned, the fundamental rights guaranteed under the Constitution of India or the legal rights would be given go bye either by the authority or by rich and influential persons or by musclemen. Law of jungle will prevail and 'might would be right' instead of 'right being might'. This Court in State of U.P. and others vs. Maharaja Dharmander Prasad Singh and others [MANU/SC/0563/1989 : (1989) 2 SCC 505] dealt with the provisions of Transfer of Property Act and observed that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited. The Court also held that there is no question of Government withdrawing or appropriating to it an extra judicial right of re-entry and the possession of the property can be resumed by the Government only in a manner known to or recognized by law."

11. In State of W.B. and others Vs. Vishnunarayan and associates (P) Ltd. and another, reported in MANU/SC/0199/2002 : (2002) 4 SCC 134, their Lordships reiterated aforesaid proposition of law and held that State and its executive officers cannot interfere with the rights of others except where their actions are authorized by specific provisions of law. Hon'ble the Supreme Court had reiterated the earlier Constitution Bench Judgment in the case of Bishan Das MANU/SC/0348/1961 : A.I.R 1961 SC 1570 followed by one other judgment reported in MANU/SC/0563/1989 : (1989) 2 SCC 505, State of U.P. Vs. Maharaja Dharmander Prasad Singh, Hon'ble the Supreme Court held that possession can be resumed by the Government only in a manner known to, or recognized by law, and it cannot resume possession otherwise than in due course of law.

12. In (2004) 13 SCC 518, Lord Shiva Birajman in H.B. Yogalaya Vs. State of U.P. and others, their Lordships held that without any show cause notice or hearing neither demolition can take place nor a person may be dispossessed from the property, to quote relevant portion:

"Admittedly, the appellants are in possession and enjoyment of the properties. In the earlier proceedings of 1976, the respondents had undertaken not to demolish the buildings or dispossess the appellants except in accordance with law. Otherwise also principles of natural justice demand that a show-cause notice and hearing be given before demolishing or dispossessing a person from the properties of which he is in possession. Counsel appearing for the respondents did not contest this proposition."

13. In a case reported in MANU/SC/0608/2010 : (2010) 8 SCC 383 Meghmala and others Vs. G. Narasimha reddy and others, while referring earlier judgment, Hon'ble the Supreme Court held as under:-

"Even a trespasser cannot be evicted forcibly. Thus, a person in illegal occupation of the land has to be evicted following the procedure prescribed under the law. (Vide Midnapur Zamindary Co. Ltd. Vs. Naresh Narayan Roy AIR 1924 PC 124; Lallu Yeshwant Singh Vs. Rao Jagdish Singh & Ors. MANU/SC/0425/1967 : AIR 1968 SC 620; Ram Ratan Vs. State of U.P. MANU/SC/0160/1976 : AIR 1977 SC 619; Express Newspapers Pvt. Ltd. & Ors. Vs. Union of India & Ors. MANU/SC/0273/1985 : AIR 1986 SC 872; and Krishna Ram Mahale Vs. Mrs. Shobha Vankat Rao MANU/SC/0278/1989 : AIR 1989 SC 2097).

In Nagar Palika, Jind Vs. Jagat Singh MANU/SC/0260/1995 : AIR 1995 SC 1377, this Court observed that Section 6 of the Specific Relief Act 1963 is based on the principle that even a trespasser is entitled to protect his possession except against the true owner and purports to protect a person in possession from being dispossessed except in due process of law.

Even the State authorities cannot dispossess a person by an executive order. The authorities cannot become the law unto themselves. It would be in violation of the rule of law. Government can resume possession only in a manner known to or recognised by law and not otherwise. (Vide Bishan Das Vs. State of Punjab MANU/SC/0348/1961 : AIR 1961 SC 1570; Express Newspapers Pvt. Ltd. (supra); State of U.P. & Ors. Vs. Maharaja Dharmander Prasad Singh & Ors. MANU/SC/0563/1989 : AIR 1989 SC 997; and State of West Bengal & Ors. Vs. Vishnunarayan & Associates (P) Ltd. & Anr. MANU/SC/0199/2002 : (2002) 4 SCC 134)."

14. Apart from aforesaid proposition of law with regard to dispossession of citizen from his or her property it is the basic concept of law in a civilized society that the society must be governed by rule of law and not otherwise. Rule of law has twin limb, firstly; a thing should be done in the manner provided by the Act or statute and not otherwise secondly; a decision should be based on known principle of law.

15. Law includes not only legislative enactments but also judicial precedents. An authoritative judgment of the courts including higher judiciary is also law.

16. It is a rule for the well governing of Civil Society to give to every man that which doth belong to him.

17. Blackstones define law as a rule of action and it is applied indiscriminately to all kinds of action whether animate or inanimate, rational or irrational...And it is that rule of action which is prescribed by some superior and which the inferior is bound to obey. Laws in their more confined sense denote the rules not of action in general but of human action or conduct.

18. It is well settled proposition of law that a thing should be done in the manner provided by the Act or statute and not otherwise, vide Nazir Ahmed Vs. King Emperor, MANU/PR/0111/1936 : AIR 1936 PC 253; Deep Chand Versus State of Rajasthan, MANU/SC/0118/1961 : AIR 1961 SC 1527, Patna Improvement Trust Vs. Smt. Lakshmi Devi and others, MANU/SC/0389/1962 : AIR 1963 SC 1077; State of U.P. Vs. Singhara Singh and other, MANU/SC/0082/1963 : AIR 1964 SC 358; Barium Chemicals Ltd. Vs. Company Law Board, MANU/SC/0037/1966 : AIR 1967 SC 295 (Para 34) Chandra Kishore Jha Vs. Mahavir Prasad and others, MANU/SC/0594/1999 : 1999(8) SCC 266; Delhi Administration Vs. Gurdip Singh Uban and others, MANU/SC/0515/2000 : 2000(7) SCC 296; Dhanajay Reddy Vs. State of Karnataka, MANU/SC/0168/2001 : AIR 2001 SC 1512, Commissioner Of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and others, MANU/SC/0662/2001 : 2002(1) SCC 633; Prabha Shankar Dubey Vs. State of M.P., AIR 2004 SC 486 and Ramphal Kundu Vs. Kamal Sharma, MANU/SC/0059/2004 : AIR 2004 SC 1657.

19. Even if for argument sake it be taken to be granted that petitioners had encroached upon the acquired land of Village Mohibullapur and had constructed boundary wall, then too the Lucknow Development Authority had no right to demolish the boundary wall without adopting due procedure of law.

20. As per the factual matrix stated in the body of the writ petition, and admitted in the counter affidavit filed by the Lucknow Development Authority, it is clear that

there is a road between the acquired land of Village Mohibullapur and land of Village Faizullaganj. The plots purchased by the petitioners fall within the limits of village Faizullaganj. Admittedly, the land of Village Faizullaganj had not been acquired. The opposite parties have not challenged the title of the petitioners over the land of Plot Nos. 11 and 12, which the petitioners had purchased from Jan Kalyan Lucknow Sahkari Grih Nirman Samiti, which comprised of Khasra Nos. 348, 349, 350 and 351. Thus, the case of the Lucknow Development Authority that boundary wall was an encroachment over the acquired land of Village Mohibullapur, is not based on any fact, and is liable to be thrown out, and the petitioners are entitle to damages on account of pecuniary loss or injury; harassment; mental agony or oppression meted to them by the illegal action of the Lucknow Development Authority, and also are entitled to a writ in the nature of Mandamus directing opposite parties not to interfere in the peaceful possession of the petitioners over plot Nos. 11 and 12 purchased through sale deed dated 19.8.1997 from Jan Kalyan Cooperative Housing Society, Lucknow, situated in Village Faizullaganj.

21. In the case reported in MANU/SC/0450/2005 : (2005) 6 SCC. 344, Salem Advocate Bar Association (II), vs. Union of India, wherein Hon'ble the Supreme Court held that where there is abuse of process of law, or litigants suffer for no fault on their part, then the Court must impose costs. In a subsequent judgment reported in MANU/SC/0714/2011 : 2011(8) SCC 249, Rameshwari Devi and others vs. Nirmala Devi and others, Hon'ble the Supreme Court held that with regard to imposition of costs, courts have to take into consideration the pragmatic realities and should be realistic with regard to plight of litigants in contesting the litigation before different courts. Courts have to broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses and factors under which a party has been compelled to contest a case in different courts. In the case of Rameshwari Devi (supra), the litigant had contested for about four decades the cases filed in different courts. Their Lordships awarded costs of rupees two lacs in addition to rupees seventy five thousand awarded by the High Court, while dismissing the appeal with costs. The relevant paras 54, 55 and 56 are reproduced as under:

> "54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.
>
> **55.** The other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The appellants have also wasted judicial time of the various courts for the last 40 years.
>
> **56.** On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/-(Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation. The appellants are directed to pay the costs imposed by this court along with the costs imposed by the High Court to the respondents within six weeks from today."

22. Reverting to the facts of the present case, we may notice that the petitioners are pursuing their case, and fighting for their rights, since more than nine years, and during this protracted period, they have suffered not only financial loss, but also mental pain and agony on account of illegal action of the Lucknow Development Authority. Hence, the petitioners also seem to be entitled for interest.

23. The writ petition is accordingly allowed in the following manner:-

(a) A Writ in the nature of Mandamus is issued directing the opposite parties not to interfere with the peaceful possession of the petitioners over plot Nos. 11 and 12 comprising of Khasra Nos. 348, 349, 350 and 351 situated in Village Faizullaganj, purchased by the petitioners from Jan Kalyan Cooperative Housing Society Ltd., Lucknow.

(b) The Lucknow Development Authority is saddled with consequential compensatory costs, quantified to rupees one lacs, and interest @ eight percent from the date of filing of the present Writ Petition till actual payment is made by the Lucknow Development Authority. The costs and interest shall be payable to the petitioners.

(c) The damages and interest shall be deposited by the Lucknow Development Authority in this Court within three months. The petitioners may withdraw the aforesaid amount.

(d) In the event damages and costs, as aforesaid, are not deposited by the Lucknow Development Authority within the period stipulated hereinabove, the District Magistrate/Collector, Lucknow shall proceed to recover the same as arrears of land revenue expeditiously, say, within next two months, and shall remit the same to the petitioners forthwith.

24. Senior Registrar of this High Court Lucknow Bench, Lucknow shall take follow up action.

25. No orders as to costs.

6

MANU/GJ/1049/2006

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No. 20563 of 2005

Decided On: 23.03.2006

Appellants: **Sureshbhai Ratilal Tanna**
Vs.
Respondent: **State of Gujarat and Anr.**

Hon'ble Judges/Coram:
K.M. Mehta, J.

Counsels:
For Appellant/Petitioner/Plaintiff: P.M. Thakkar, Adv. for Thakkar Assoc. for Petitioner 1

For Respondents/Defendant: L.R. Poojari, AGP

Case Note:
Criminal - Detention Order - Section 61 of the Land Revenue Code and Articles 21 and 22 of the Constitution of India - Land purchased by Ashok Co-operative Housing Society -Revenue claimed that land did not belong to previous owner - Grabbing of government land - Petitioner was secretary of the society - Mamlatdar issued notice under Section 61 of the Act on the ground that disputed land was encroached - Mamlatdar after examining the records dropped the encroachment proceedings - Collector issued notice to society as to why order passed by Mamlatdar should not be reviewed - Society filed appeal before the Tribunal challenging notice issued by Collector - Though proceedings were pending for final adjudication, District Magistrate passed order of detention against the petitioner - Hence, present petition - Maintainability of petition challenged - Held, petitioner was a genuine businessman having no past history or criminal antecedents - He did not have connection with anti-social activity warranting detaining authority to book petitioner - Action of respondent seeking detention of petitioner in violation of Articles 21 and 22 of Constitution - No allegation that petitioner took illegal possession of public or private land by criminal intimidation - Thus, order of detention was bad in law and, accordingly, set aside

JUDGMENT

K.M. Mehta, J.

1. Rule. Mr. L.R.Poojari, learned AGP appears and waives service of rule on behalf of respondents.

2. Sureshbhai Ratilal Tanna, petitioner, has filed this petition under Article 226 of the Constitution of India, challenging the legality and validity of the order of District Magistrate, Rajkot, - respondent No. 2 seeking to detain the petitioner under provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as PASA). The said petition was filed on 8th October, 2005, and the Court has issued notice on 11th October, 2005, and passed the orders from time to time and ultimately on 29th December, 2005, this Court passed the order that during pendency of petition the authority will not take any coercive measure in this behalf.

3. The facts giving rise to this petition are as under:-

3.1 Mr. P.M.Thakkar, learned Senior Counsel for the petitioner stated that the detention order was passed (which is still not executed " pre-detention matter) is as under:

> 3.1A There is a land bearing Survey No. 466 paiki ad-measuring 3 Acre 30 Gunthas which was purchased by Ashok Co-operative Housing Society in 1965 by Registered Sale Deed by the then promoters and office bearers of the society from the predecessor in title Tapu Bechar. According to the claim of the revenue authorities, the land does not belong to the previous owner Tapu Bechar but the same belongs to Government and therefore the society has encroached upon the Government land and it amounts to grabbing of the Government land.

3.2 The learned counsel submitted that it is pertinent to note that the land in question which was purchased by the housing society in 1965 by registered sale deed dated 20.10.1965 by the then President and Promoters of the society. In support of the same he has relied upon Annexure A page 14 which provides said sale deed in this behalf. It is the case of the petitioner that the petitioner was neither office bearer nor the petitioner had attributed any rule in purchasing the said land for the society. He further submitted that somewhere in 1982-83 upon implementation of Town Planning Scheme in Rajkot City, the society was reallocated Final Plot No. 939 ad-measuring 10450 sq.mtrs. The society was allotted a final plot. Out of that the society allotted 54 plots to the members and possession was handed over to them. The petitioner became member of the society in 1984 and was allotted plot No. 11 by the society.

3.3 From the year 1982 to 2000, the society was managed by the President Ratilal Dhanjibhai. Thereafter society went into liquidation and on 1.10.2000 the District Registrar, State of Gujarat, appointed custodian to the said society. From 1.10.2000 to 13.6.2002 the said custodian has managed the affairs of the society.

3.4 The Managing Committee was elected on 13.6.2002 and took over the charge of the society. On the same day, the petitioner was elected as Honorary Secretary of the said society. At this stage it is relevant to note that the Mamlatdar, Rajkot City, issued a notice on 27.5.1996 under Section 61 of the Land Revenue Code which provides penalties for unauthorized occupation of land inter-alia alleging that the society has encroached upon the Government land and therefore the encroachment should not be removed. The society in response to aforesaid notice filed reply on 20.9.1996 and produced registered sale deed under which the society had purchased the same from a private party in 1965. The Mamlatdar, Rajkot City after examining the revenue record and the evidence produced by the society vide an order dated 8.4.1999 gave a finding that there is no evidence to establish that it is a Government land. The encroachment proceedings were therefore dropped vide order dated 8.4.1999.

3.5 In support of the same, the learned advocate has relied upon Annexure C the order dated 3.4.1999 passed by the Mamlatdar, Rajkot City (relevant pages 48 and 49). The learned counsel further submitted that the Collector, Rajkot City thereafter issued a notice dated 21.2.2000 to the society as to

why the above order passed by the Mamlatdar should not be taken in review. The society has submitted its objections and the said proceedings are still pending for adjudication.

3.6 Being aggrieved and dissatisfied with the said action the society also filed appeal before the Gujarat Revenue Tribunal challenging the notice issued by the Collector, Rajkot. Thus, the title of the Government in respect of the land is yet not fully adjudicated and established and the main dispute is pending for adjudication before the revenue authorities. The learned advocate therefore submitted that till the final adjudication and until it is held that the land in question is Government land, the detaining authority cannot presume the title to the land of Government and proceed to pass the detention order against the petitioner.

3.7 The learned advocate further submitted that the Ex-President Shri Ratilal Dhanjibhai who remained from 1982-2000 as President of the society was detained as Property Grabber under PASA on the same grounds for which he has relied upon Annexure F (pages 59 to 73) wherein the grounds of detention has been given. However, the Advisory Board did not approve the detention and the order of detention has been revoked by the Government in this behalf.

3.8 In view of the aforesaid facts and circumstances of the case, the learned advocate submitted that the society was managed by custodian appointed by the District Registrar, State of Gujarat from 1.10.2000 to 13.6.2002 and transferred the plots of the society in favour of purchasers. Even the custodian of the Government at no point of time took the stand that the land possessed by the society is a Government land.

3.9 As indicated above, the petitioner was elected as Honorary Secretary of the society on 13.6.2002. As a secretary of the society, the petitioner has to implement and carry out the resolutions passed by the Managing Committee of the society. It is pertinent to note that the petitioner has neither purchased the land for the society nor the petitioner has sold any plot to anybody. The learned advocate submitted that if any member sells his plot to the buyer, the Managing Committee of the society has to give no objection, and as and when, any member has sold the land by executing sale deed, the purchaser would produce it before the society and as a Secretary, the petitioner has to enter the name of the purchaser in the record of the society as was done by the custodian appointed by the Government. Thus, the petitioner cannot be said to be property grabber as defined under Section 2(h) of the Act.

3.10 The learned advocate submitted that however to the great shock and surprise of the petitioner, though the proceedings in respect of the land in question is pending for final adjudication, the District Magistrate, Rajkot has passed an order of detention under PASA on 25.9.2002 and has detained Ex-President " Ratilal Dhanjibhai Rajdev as the property grabber, who is accused No. 1 in the FIR. The petitioner therefore has a genuine apprehension that the petitioner will be detained under PASA to the order dated 25.9.2005 passed by the respondent No. 2 District Magistrate, Rajkot City which is annexed and marked as Annexure F to the petition.

3.11 Being aggrieved and dissatisfied with the said action, the petitioner has filed present petition against execution of detention order on following main, amongst other grounds.

4. Before the learned advocate for the petitioner submitted the present petition, Mr. L.R. Poojari, learned AGP raised a preliminary contention.

4.1. The learned AGP submitted that the order of detention is not executed and the petitioner has not surrendered to the order passed by the authorities as such no right much less fundamental right of the petitioner is violated by the respondent authorities. The petitioner is not entitled to have the copy of the grounds of detention at the pre-detention stage. By way of filing this petition, the petitioner cannot compel the authorities to disclose the grounds of detention before the same is executed. As per the settled legal position of law laid down by the Hon'ble Supreme Court of India and reiterated time and again by the Hon'ble Apex Court as well as by this Court the petitioner is required to surrender first before challenging the order of detention which is not served upon him and not executed by the authority and therefore, the present petition filed by the petitioner invoking the extraordinary jurisdiction under Article 226 of the Constitution of India cannot be treated as habeas corpus petition. As per the provisions of the Constitution and the provisions of PASA Act the petitioner is entitled to have the copy of grounds of detention and the accompaniments thereto only after the order of detention is executed and he is detained. Therefore, the respondents have preliminary objection about the maintainability of the present petition.

4.1A He has also relied on the judgement of the Hon'ble Supreme Court in the case of Union of India and Ors. v. Prasmal Rampuria reported in MANU/SC/0215/1998 : (1998)8SCC402 and also another judgement in the case of Union of India v. Vidya Bagaria reported in MANU/SC/0434/2004 : 2004CriLJ2480 as well as judgement in the case of Union of India and Ors. v. Muneesh Suneja reported in MANU/SC/1130/2001 : 2001CriLJ1069 .

4.1B Mr. L.R. Poojari, learned AGP has relied upon paras 31 and 32 of the judgement of the Hon'ble Supreme Court in the case of Additional Secretary to the Govt. of India and Ors. v. Smt. Alka Subhash Gadia and Anr. reported in MANU/SC/0552/1992 and stated that this Court may not interfere in this behalf.

4.2 The learned AGP has also relied upon the judgment of this Court in Special Civil Application No. 7721 of 2005 in a case of pre-detention, even after a complaint filed against the petitioner therein was quashed by this Court, without expressing any opinion on the merits of the case, considering the settled legal position this Court was pleased to dismiss the pre-detention petition filed by the petitioner therein.

5. Mr. P.M. Thakkar, learned counsel for the petitioner has stated that it is no doubt true that ordinarily the Court did not interfere with pre-detention order i.e., the order of detention which was not executed. However, he has submitted that there is no absolute bar in entertaining the petition in certain circumstances. In support of the same, he has relied on the judgement of the Hon'ble Supreme Court in the case of Additional Secretary to the Govt. of India and Ors. v. Smt. Alka Subhash Gadia and Anr. (supra). In that case the Hon'ble Supreme Court has laid down the principle regarding pre-determination in para 30 on page 520 in which the Court has held that powers under Articles 226 and 32 are wide and are untrammelled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, in the said judgement the Hon'ble Supreme Court has held that it is not correct to say that the Courts have no power to entertain grievances against any detention order prior to its execution. The Courts have necessary power and they have used it in proper cases as has been pointed out in the said judgement, although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope

and number. The Hon'ble Supreme Court has laid down certain exceptions.

Findings on the preliminary issues:

6. I have considered the judgement of the Hon'ble Apex Court in the case of Alka Subhash Gadia (supra). From the said judgement it is no doubt true that the Hon'ble Apex Court has laid down that power to entertain the petition at pre-detention stage is a limited jurisdiction. However, from that it is not correct that the Courts have no power to entertain the grievance in a detention order prior to its execution and the Courts have laid down or jurisdiction the principle in which the petition can be entertained. In view of this , the judgement of the Hon'ble Supreme Court in the case of Alka Subhash Gadia (supra) which has been followed by several other judgements of the Hon'ble Supreme Court, in my view, the contention raised by the learned AGP regarding maintainability of the petition at pre-execution stage is rejected. In view of the same, the present petition challenging the order of detention which has not been executed is still maintainable at law.

SUBMISSION ON THE MERITS OF THE MATTER:

7. The learned counsel for the petitioner submitted that the action on the part of respondent No. 2 in seeking to detain the petitioner is in violation of Articles 21 and 22 of the Constitution of India. The learned advocate further submitted that the preventive detention is to prevent a person from indulging into anti-social activities which are prejudicial to the maintenance of public order. The petitioner is a genuine businessman having no past history or criminal antecedents. The petitioner is not connected with any anti-social activity which would warrant the detaining authority to book the petitioner under PASA. The detaining authority appears to have exercised the powers of preventive detention in an arbitrary manner for some oblique motives. The impugned action not being in consonance with the provisions of Articles 21 and 22 of the Constitution of India, the same is required to be quashed and set aside.

7.1 It is the apprehension of the petitioner that the Government has passed the order on the ground that the petitioner is a property grabber as defined under the provisions of PASA Act. At this stage I refer to Section 2(h) of the PASA Act which defines property grabber which reads as under:

> property grabber means a person who illegally takes possession of any lands not belonging to himself but belongings to Government, local authority or any other person or enters into or creates illegal tenancies or lease and licence agreements or any other agreements in respect of such lands or who constructs unauthorised structures thereon for sale or hire or gives such lands to any person on rental or lease and licence basis for construction of use and occupation of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for Construction of unauthorized structures thereon or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure or who abets in any manner the doing of any of the above-mentioned things.

7.2 The learned advocate further submitted that the detaining authority has relied upon statements of few members of the society who have directly purchased the plots from its original owners. The society has not sold any plots to anybody and therefore the petitioner cannot be held responsible. Moreover, the said plot holders have constructed residential houses without obtaining any permission at their own cost and risk. Their statements do not disclose any fraud committed by the petitioner

or by the society since they have directly purchased the plots by registered sale deed from original owners. Thus, the detaining authority has not properly applied its mind and the subjective satisfaction of the detaining authority is vitiated since it is not based on any cogent material. The detention order is therefore unsustainable in the eye of law.

7.3 The learned advocate for the petitioner submitted that the detaining authority has passed the order on vague, extraneous and irrelevant grounds inasmuch as the adjudication with regard to title of the land is still pending. At this stage it cannot be assumed that the land in question is a Government land and the society has illegally obtained possession. The petitioner submitted that the question raised in the petition is regarding pre-detention of the detention order. In this connection the petitioner relied upon the judgment of the Hon'ble Apex Court in the case of Additional Secretary, Government of India and Ors. v. Smt. Alka Subhash Gadia and Anr. reported in MANU/SC/0552/1992. In that case the Hon'ble Apex Court has laid down the principle regarding pre-detention in para 30 on page 520 which reads as under: (at the 2nd line from bottom).

> xxxxxxxxxxxxxxxxxxxxx Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

7.4 In view of the aforesaid decision, the learned advocate submitted that the order of pre-detention can be challenged on following grounds.

(i) That the impugned order is not passed under the Act, under which it is purported to have been passed.

(ii) That it is sought to be executed against a wrong person.

(iii) That it is passed for a wrong purpose.

(iv) That it is passed on vague, extraneous and irrelevant grounds; or

(v) That the authority which passed it, had no authority to do so.

7.5 The learned advocate for the petitioner, therefore, submitted that the case of the petitioner is covered by the aforesaid exceptions namely, Exception (i) and Exception (iv). Exception (i) that the impugned order is not passed under the Act under which it is purported to have been passed and Exception (iv) that it is passed on vague extraneous and irrelevant grounds.

7.6 The learned advocate for the petitioner submitted that considering the

proposition laid down by the Hon'ble Supreme Court in the aforesaid decision, the petitioner does not appear to fall within the ambit of property grabber as defined under Section 2(h) of the Act. Thus, the case of the petitioner falls under exception (iv) that it is passed on vague extraneous and irrelevant grounds.

8. Exception (ii): That it is sought to be executed on a wrong person:

8.1 The learned advocate for the petitioner submitted that the land in question bearing Survey No. 466 paiki ad-measuring 3 Acre " 30 Gunthas by the Ashok Housing Society under the registered sale deed dated 20.10.1965 from its original owner on payment of full consideration as a bona fide purchaser. The petitioner was not the office bearer much less a member of the said society nor was the petitioner in any manner connected with the society. The petitioner became member of the society in 1984 i.e., 19 years after the society had purchased the land. Thus, since the petitioner has not played any role and as the land was purchased by the then promoter and office bearers of the society in the year 1965. Thus, the detention order is sought to be executed against a wrong person. Thus, the case of the petitioner falls under Exception (ii) as stipulated in the case of Alka Subhash Gadia and Anr. reported in 1992 Supp (1) SCC 496, therefore, this Court has necessary power to set aside the detention order at pre-detention stage.

8.2 Exception (iii): It is passed for a wrong purpose:

8.2A The learned advocate for the petitioner submitted that the petitioner was elected as Honorary Secretary of the society only in 2002 and in discharge of his duties as Secretary the petitioner has been defending the dispute pending before revenue authorities i.e., District Collector, Rajkot and the same Collector, acting his powers as District Magistrate, Rajkot has passed the detention order against the petitioner. Thus, to harass and to pressurize the petitioner not to defend the society in the litigation against Government, the detaining authority has passed the detention order for wrong or incorrect purpose. Thus, the case of the petitioner falls in Exception (iii) as laid down in Alka Gadia's case (supra).

8.3 Exception (iv): That it is passed on vague, extraneous and irrelevant ground:

8.3A The learned advocate for the petitioner submitted that the dispute as to whether the land purchased by the society is a private land or a Government land is pending for adjudication before the revenue tribunal. As against that there is a positive finding given by the Mamlatdar, Rajkot City vide an order dated 3.4.1999 as per Annexure C that from the revenue record it is not shown as a Government land and there is no evidence to establish the title of the Government for the land in question. Thus, it cannot be said that the land purchased by the society is a Government land and, therefore, the petitioner cannot be detained as a property grabber within the meaning of Section 2(h) of the PASA Act. The learned advocate submitted that the detention order is passed by the detaining authority in exercise of power under Sub-section (1) of Section 3 of the Act read with Section 2(h) and 2(i) of the Act. Section 3(1) of the Act confers the power to detain a person, if it is satisfied that such detention is necessary to prevent him from acting in any manner prejudicial to maintenance of public order. Sub-section (4) of Section 3 provides that the persons shall be deemed to be acting in a manner prejudicial to the maintenance of public order when such person:-

(a) is engaged in or;

(b) is making preparation for engaging in any activities whether as a (i) bootlegger or (ii) dangerous person or (iii) drug offender or, (iv) immoral traffic offender or, (v) property grabber, which affect adversely or is likely to affect adversely the maintenance of public order.

8.4 The learned advocate for the petitioner submitted that in a plain reading of the aforesaid provision, it is apparent that the power to detain a person can be exercised only on the grounds enumerated in Sub-section (1) read with Sub-section (4) of Section 3 of the Act. If the exercise of power is not on the face of the order correlated to any of the said grounds for concerned activities which are not germane to any of the said grounds, such exercise would be vitiated by lack of jurisdiction. Thus, to exercise the powers of detention, the detaining authority has to satisfy itself that the petitioner is a property grabber as defined under Section 2(h) of the Act and that the said activities are adversely or likely to adversely affect the maintenance of public order.

8.5 Exception (v): The authority which passed it has no authority to do so:

8.5A The learned advocate for the petitioner submitted that since the petitioner does not fall within the definition of property grabber under Section 2(h) of the Act and as the petitioner has not indulged into any activity which is prejudicial to maintenance of public order as there is no allegation against the petitioner that the petitioner has taken illegal possession of public or private land by criminal intimidation with the help of musclemen or is indulging in any anti-social activity like land grabbing which is menace to even tempo of life. In the instant case, it cannot be said that the petitioner is a property grabber and the alleged activity has adversely affected or likely to affect the maintenance of public order and therefore the detention order is without jurisdiction and is falls under Exception (v) that the authority which has passed it, has no authority to do so as carved out in the case of Alka Gadia's case (supra). The learned advocate therefore submitted that in above set of facts the case of the petitioner falls within five exceptions carved out by the Hon'ble Supreme Court in the Alka Gadia's case (supra) and therefore this is a fit case to exercise extra ordinary jurisdiction under Article 226 of the Constitution of India to set aside the detention order at the pre-detention stage.

SUBMISSION ON THE MERITS OF THE ORDER BY LEARNED A.G.P. MR L.R. PUJARI:

9.1 The learned AGP further submitted that though the petitioner has raised several contentions and contended that the case of the petitioner falls within the exception laid down in the case of Alka Gadia (supra), however, the case of the petitioner does not fall within the exception laid down in Alka Gadia's case and therefore the petitioner cannot challenge the present petition at the pre-execution stage.

9.2 The learned AGP has also relied upon another judgment of Hon'ble Supreme Court in the case of Navalshankar Ishwarlal Dave v. State of Gujarat reported in MANU/SC/0343/1994 : 1994CriLJ2170 particularly paragraphs 3 and 4 ofthe said judgment. He has also relied upon the Constitution Bench judgment of Hon'ble Apex Court in the case of Haradhan Saha v. State of West Bengal reported in MANU/SC/0419/1974 : 1974CriLJ1479 particularly paragraphs 19, 22 & 32 on preventive detention. He has also relied upon another decision in the case of

Khudiram Das v. State of West Bengal reported in MANU/SC/0423/1974 : [1975]2SCR832 .

9.3 The learned AGP further submitted that the case of petitioner does not fall within the five exceptions mentioned in the case of Smt. Alka Gadia (supra). The learned AGP has submitted that the present petitioner being the son of Ratilal Tanna and also being the member and secretary of the Ashok Co-operative Housing Society was knowing very well that the land is belonging to the Government and stay orders were also issued by the authorities from time to time. From the various documents and other relevant materials including the statement of the petitioner and statement of various other witnesses and from the panchnama it is very clearly disclosed that petitioner after becoming the secretary of the society transferred various plots to different persons in breach of the stay order passed by the authority from time to time by keeping them in dark about the aforesaid proceedings and orders passed by the authorities from time to time, making them believe that the society was having right, title and interest in the said land even though the same is belonging to the Government and the society never had any right, title or interest in the said property. According to him, the order was rightly passed under the PASA Act as the case of the petitioner is falling within the definition of property grabber as defined under Section 2(h) of the PASA Act. Therefore, it has sought to be executed against the petitioner, a person who is a property grabber as defined under Section 2(h) of the Act. The order is passed with a view to prevent the petitioner from grabbing the Government land in future and for the exigency which has arisen as stated herein before and in the grounds of detention as there is great possibility of disturbance of public order. He further submitted that the case of Ratilal Dhanjilal Rajdev, Ex-President is quite different then the petitioner in this behalf. According to him, the role played by petitioner and Shri Ratilal Dhanjibhai Rajdev, President of the Society and the activities indulged by them are quite different and petitioner cannot rely upon the said order in this behalf.

10. I have considered the facts and circumstances of the case. I have also considered the decision of the Hon'ble Supreme Court in Alka Gadia's case (supra) and various decisions cited by both the sides.

CONCLUSION AND FINDINGS:

11. The learned counsel for the petitioner on merits of the matter clearly demonstrates that the authority has tried to clearly abuse the process of law, and if at this stage, if the authority is allowed to execute the order, the petitioner will have to go in jail and thereafter challenging the same and after the order is set aside the petitioner will be set at liberty but the effect is that the petitioner will have to go in jail. This attitude of the State Government is clearly an abuse of discretionary powers conferred under law and contrary to and inconsistent with the provisions of the Constitution of India particularly Article 21 which provides Right to Life which has been greatly expounded by the Hon'ble Supreme Court of India. In view of the same, the contention of the learned AGP that this Court may not hear the petition at this stage is devoid of any merits and the same is required to be rejected.

12. I have considered the facts and circumstances of the case. I have also considered the case of Alka Gadia's case (supra) and also the exceptions laid down therein. It may be noted that in this case whether the land is a Government land or the society, the matter is still at large pending before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal has yet to adjudicate the said issue whether the land belongs to the Government or to the society. Once the issue is not fully decided then the contention of the respondent authority is that the land in question is a Government land and

petitioner is a property grabber cannot stand in eye of law and therefore the said basic premises on which the Government relied upon is devoid of any merits.

12.1 In my considered view, the land bearing Survey No. 466 paiki ad-measuring 3 Acre 30 Gunthas which was purchased by the Ashok Housing Society in the year 1965 by registered sale deed dated 20.10.1965 from its original owner on payment of full consideration, as a bona fide purchaser. In the year 1965 the petitioner was neither the office bearer nor member of the said society. The petitioner was not in any manner connected with the society. The petitioner became member of the society in 1984 i.e., 19 years after the land was purchased by the society. Thus, since the petitioner has not played any role at all and as the land was purchased by the then promoter and office bearers of the society in the year 1965. If the authority really desires to execute the order they ought to have executed an order on a person who has purchased the property in the year 1965. Thus the contention of the petitioner that the detention order sought to be executed against a wrong person is required to be accepted and the petitioner case is falling within the said exceptions as laid down by the Hon'ble Supreme Court in Alka Gadia's case (supra).

12.2 Secondly, the petitioner was elected as Honorary Secretary of the society only in 2002 and in discharge of his duties as Secretary the petitioner has been defending the dispute pending before revenue authorities i.e., District Collector, Rajkot in this behalf. Thus the District Collector who is also adjudicating the dispute of the society passed the order of detention against the petitioner as he was defending the society before Adjudicating Authority. Thus the order of detention passed by respondent No. 2 in this case is clearly an abuse of process of law and the case of the petitioner is clearly falls within Exception (iii) that the same is passed for a wrong purpose.

12.3 As indicated above, when the main contention as to whether the land belongs to Government or private party is still pending for adjudication before the Revenue Tribunal, and in view of this, the contention of the Government that the land belongs to Government and the petitioner became property grabber is contrary to and inconsistent with the provisions of Land Revenue Code as well as authority of revenue tribunal and so the same has vitiated the subjective satisfaction arrived at by the authority under the provisions of PASA Act.

12.4 On plain reading of Sub-section (1) of Section 3 of the Act read with Sub-section (4) of Section 3 of the Act, in my view, it is apparent that the power to detain a person can be exercised only on the grounds enumerated in Sub-section (1) read with Sub-section (4) of Section 3 of the Act. If the exercise of power is not on the face of the order correlated to any of the said grounds for concerned activities which are not germane to any of the said grounds, such exercise would be vitiated by lack of jurisdiction. Thus, to exercise the powers of detention, the detaining authority has to satisfy itself that the petitioner is a property grabber as defined under Section 2(h) of the Act. Further the detaining authority has to satisfy that the said activities are adversely or likely to adversely affect the maintenance of public order. As in the present case the aforesaid ingredients are not proved, therefore, the subjective satisfaction arrived at by the authority is bad in law and liable to be quashed and set aside. Thus when Government is not able to prove that the land belongs to Government as the proceedings of the land are still pending before the Land Revenue Tribunal so the condition precedent for exercising the power and jurisdiction that person is property grabber is lacking. So action of the Government is without jurisdiction. Therefore, the detention order is passed is without jurisdiction and is falls under Exception (v) that the authority which has passed it, has no authority to do so.

12.5 In my considered view of the facts of the case, the case of the petitioner does not fall within the definition of property grabber as the petitioner has not been indulged into any activity which is prejudicial to maintenance of public order as there is no allegation against the petitioner that the petitioner has taken illegal possession of public or private land by criminal intimidation with the help of musclemen or is indulging in any anti-social activity like land grabbing which is menace to even tempo of life. In view of the same, the order of detention is also bad in law.

12.6 In this connection I rely on the judgement of the Hon'ble Supreme Court in the case of Navalshankar Ishwarlal Dave and Anr. v. State of Gujarat and Ors. reported in MANU/SC/0343/1994. In the aforesaid judgement inpara 4 on page 762 the Hon'ble Supreme Court has considered the definition of property grabber under Section 2(h) and definition of unauthorised structure contained in Section 2(i) of the PASA Act and after referring to the same, the Hon'ble Apex Court has observed as under:

Therefore, a person who illegally takes possession of any lands not belonging to himself but belonging to Government, local authority or any other person or enters into or creates illegal tenancies or leave and licence agreements or any other agreement in respect of such lands or who constructs unauthorised structures thereon or enters into agreement for sale or gives on hire or gives such lands or structures to any person on rental or leave or licence basis for construction or for use and occupation of unauthorized structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for construction of unauthorised structures thereon or who collects or attempts to collect from any occupiers of such lands rent, compensation, or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to lawful procedure or who abets in any manner the doing of any of the above mentioned acts or things is a property grabber.

12.7 The Hon'ble Apex Court has considered the objects and reasons of the PASA Act and further observed as follows:

> Para 4 of the statements and objects of the Act furnishes clue to make the property grabbing or unauthorised construction or dealing therewith as prejudicial to the maintenance of public order thus:
>
> > 'Acute shortage of housing accommodation in major cities is being exploited by certain musclemen of some means, often got from bootlegging, by taking illegal possession of public or private lands and constructing or permitting construction thereon of unauthorised structure or selling, leasing or giving on leave and licence such land or unauthorised structure after collecting heavy price, rents, compensation and the like, in so collecting the charge from the occupiers, the musclemen resort to criminal intimidation. The entire community living in the slums is under the grip of perpetual fear of such land grabbers. Such activities of these persons adversely affect the public order.

12.8 After quoting the objects and reasons the Hon'ble Supreme Court has further observed as under:

> Therefore, taking illegal possession of public or private lands or unauthorised construction or structures thereon or dealing with those properties or threatening or criminal intimidation of slum dwellers cause or likely to disturb even public tempo disturbing public order. To prevent dangerous person or persons indulging in anti-social activities like land grabbing or

dealing with such properties is a menace to even tempo and the legislature intended to provide remedy by detention, be it by the State Government or the authorised officer on subjective satisfaction that such activity or activities adversely affect or are likely to adversely affect public order.

12.9 I also rely on Section 2(1) of PASA Act which defines unauthorised structure. I also rely on the judgement of this Court in the case of H.A. Grover v. State reported in 1999(3) GLR 2516 particularly paragraph 19 where this Court has held as under (on page 2522):

> **19.** Thus according to this section, a person can be said to be property grabber when -
>
> (i) he illegally takes possession of any land not belonging to himself, but belonging to Government, local authority or any other person,
>
> (ii) he enters into such land or,
>
> (iii) he enters illegal tenancy over such land or,
>
> (iv) he creates leave and licence agreement or any other agreement in respect of such land, or
>
> (v) he constructs unauthorized structures thereon for sale, or hire, or
>
> (vi) gives such land to any person on rental or leave and licence basis for construction or,
>
> (vii) gives such land for use and occupation of unauthorized structures, or
>
> (viii) who knowingly gives financial aid to any person for taking illegal possession of such land or,
>
> (ix) he gives such land for construction of unauthorized structures thereon, or
>
> (x) he collects or attempts to collect from any occupier of such land, rent, compensation or other charges by criminal intimidation or
>
> (xi) he evicts or attempts to evict any such occupier by force without resorting to lawful procedure or
>
> (xii) he abets in any manner the doing of any of the above mentioned things.

12.10 After that, in para 20, 21, 22, 23 and 24 this Court has considered the facts of that case and ultimately in paragraph 25 on page 2523 this Court has observed as follows:

> In such state of affairs, there was little material before the detaining authority which could have enabled him to reach subjective satisfaction that the petitioner is a property grabber. The subjective satisfaction of the detaining authority on this point, therefore, seems to be non-existent and in any case it was imaginary subjective satisfaction of the detaining authority which cannot be upheld. Thus, if the petitioner cannot legally be called as property grabber the order of detention passed against him has to be

quashed without entering into further contentions raised by the learned Counsel for the petitioner.

12.11 In view of the aforesaid decision the basic definition of property grabber is that a person who is alleged to be of property grabber is a person who has no title to the property and has been involved in any of the activities mentioned in Section 2(h) in respect of land to which he has no title or is not the owner. The words who constructs unauthorized structures thereon for sale or hire in Section 2(h) also refers to these activities in respect of land to which the person alleged to be property grabber is not the owner and has no title. It is clear from the words of Section 2(h) which read a person who illegally takes possession of any lands not belonging to him.

12.12 On conjoint reading of Section 2(h) and (i) with Section 3 of the Act it appears that the subjective satisfaction arrived at by the authority for detaining a person is absent and the authority has not exercised the power in good faith and therefore the order of detention is required to be quashed and set aside and accordingly it is set aside.

13. So the case of the petitioner falls within the four corners of Alka Gadia's case (supra), and in fact, the ratio of Alka Gadia's case (supra) is still good law and the Hon'ble Supreme Court has time and again reiterated the same principle and the said ratio has not been divulged anyway in this behalf. Therefore, this Court rely upon the decision of Alka Gadia's case (supra), and in view of the same, the detention order passed by the authority is bad in law and the same deserves to be quashed and set aside.

14. It may be noted that the learned AGP has raised contention that even if the petitioner is able to prove his case, this Court may not grant any relief as the petitioner has come before this Court before the detention order has been executed. On the other hand the learned counsel for the petitioner has submitted that from the facts and submissions made by the petitioner and the material which he has demonstrated in this case, it reveals that this is clearly an abuse of process of law and therefore this Court must grant complete relief to the petitioner. From the record it appears that the basic fact that the land is Government land is not established by the Government. Once that is not established, the Government cannot contend that the petitioner is a property grabber. It is submitted that the petitioner has defended his case before the authority in a regular adjudicating process. As the authority is not able to prove their case in the revenue proceedings, the authority now desires to make steps under the provisions of PASA Act, though, in fact, they have not been able to prove any ingredients of property grabber under PASA Act. It is their case that even if the authority is not able to prove their case but today the order of detention can be executed and after the petitioner be sent in jail he can challenge the said order and at that time this Court may grant final relief after considering the grounds supplied by them. The learned counsel for the petitioner states that as this is a case of complete abuse of process of law, this formality could not be adhered to.

15. I have considered the rival submissions. In my view this is a complete case of abuse of process of law and therefore this Court can grant relief to the petitioner. What is abuse of process of law is as under:

> Mandamus can be issued in case of abuse of power. There may be cases where the power is exercised illegally or there is misuse of it. A power vested by statute when exercised for a purpose other than what is stipulated under the statutory provisions, there is an abuse of power since the collateral

purpose was not within the intendment of the statute Mandamus can issue when an authority professing to exercise its powers for a statutory purpose is in fact employing them in furtherance of some ulterior object. (See: Law of Writs, 5th Edition, (1993) Part III Specific Writs " page 665) (Edited by C.K. Thakker, J) (Now Judge of Supreme Court).

15.1 I also rely on the Division Bench judgement of this Court in the case of Laxman Popatbhai v. State of Gujarat reported (1976) 17 GLR 370 (Coram: J.B. Mehta and A.D. Desai, JJ) where the petitioner, a Government servant, was suspended and a prolonged enquiry against him ended in his favour. He was acquitted of all charges and as per Rule 152 of the Bombay Civil Services Rules, 1959, the State ordered the entire suspension period as duty period paying all the backwages. Even a civil suit to recover alleged loss failed. Yet, again the Government sought to forfeit his pension on groundless allegations unsupported by any evidence. So a writ of mandamus was prayed against the State. It was contended that at the most the High Court could quash the order by directing the Government to hold fresh enquiry. This Court negativing the said contention on page 381 has observed as under:

> To concede such a right to the State would be to permit complete abuse of power in the context of such cases and deny the guarantee of the rule of law enshrined in our Constitution to all civil servants.

Ultimately, on the same page at bottom the Division Bench observed as under:

> We are entitled to hold that no fresh enquiry in the case shall be held against the petitioner and that the hatchet shall be buried once for all because it would be gross abuse of power to permit any such enquiry after all these infructuous proceedings when the State had ample opportunity to prove its alleged charges and when it itself had treated the concerned Government servant as honourably acquitted and even a civil suit had failed.

16. The contention of the learned AGP that Government has power to Act under the PASA Act and therefore this Court may not interfere with the said power which has been exercised by the Government. The said argument of the learned AGP cannot be accepted. For coming to the said conclusion, I rely on the following:

> The first requirement is the recognition that all power has legal limits. The next requirement, no less vital, is that the Courts should draw those limits in a way which strikes the most suitable balance between executive efficiency and legal protection of the citizen. Parliament constantly confers upon public authorities powers which on their face might seem absolute and arbitrary. But arbitrary power and unfettered discretion are what the Courts refuse to countenance. They have woven a network of restrictive principles which require statutory powers to be exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the empower Act. They have also, as explained elsewhere, imposed stringent procedural requirements. Here we are concerned with the substance of administrative discretion. (See: Administrative Law, 9th Edition, by H.W.R. Wade & C.F. Forsyth " Part V Discretionary Power - Chapter 11 Abuse of Discretion on page 343)

17. In view of this, though the Government has power to pass order, the same should be exercised within the legal limits. When the order has been passed without statutory limits, the order can be struck down.

18. From the record it appears that the order dated 25.9.2005 passed by the District

Magistrate, Rajkot, detaining Ex-President Ratilal Dhanjibhai Rajdev as property grabber who is accused No. 1 in FIR has already been set aside by the Advisory Board. In view of the aforesaid detention order, the apprehension expressed by the petitioner that the authority may try to pass order against the petitioner for his detention is well founded and therefore this Court quashes and sets aside the impugned action of the respondent authority seeking to detain the petitioner, namely, Shri Sureshbhai Ratilal Tanna under the provisions of PASA Act as being illegal, invalid, unfair and suffering from total non-application of mind and violative of Article 14, 19(1)(g) and 21 of the Constitution of India. Rule is made absolute with no order as to costs. Direct service is permitted.

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