

CASE NO.:
Appeal (civil) 1849 of 2002

PETITIONER:
V. Laxminarasamma

RESPONDENT:
A. Yadaiah (dead) & Ors

DATE OF JUDGMENT: 12/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.1849 OF 2002
(With Civil Appeal No. 1850 of 2002)

Dr. ARIJIT PASAYAT, J.

1. Heard learned counsel for the parties.
2. When the matter was being heard, learned counsel for the parties submitted that two decisions of this Court, each rendered by two learned Judges expressed contrary views and, therefore, the matter deserves to be referred to a larger Bench.
3. The disputes relate to the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (in short the 'Act'). In *Konda Lakshmana Bapuji v. Govt. of A.P. and Ors.* (2002 (3) SCC 258), it was observed that all the questions concerning the civil nature of dispute are to be decided by the Special Court set up under the Act and the Civil Court has no jurisdiction. It was specifically mentioned that the questions of ownership, lawful possession can be decided by the Civil Court and mere allegation of land grabbing would suffice. In para 17 it was, inter-alia observed as follows:
"17. It is pertinent to note that mere allegation of an act of land grabbing is sufficient to invoke the jurisdiction of the Special Court. In both Section 7(1) and Section 8(1) of the Act the phrase "any alleged act of land grabbing" is employed and not "act of land grabbing". It appears to us that it is designedly done by the legislature to obviate the difficulty of duplication of trial once in the courts under the Act and over again in the ordinary civil court. The purpose of the Act is to identify cases involving allegation of land grabbing for speedy enquiry and trial. The courts under the Act are nonetheless civil courts which follow the Code of Civil Procedure and are competent to grant the same reliefs which can be obtained from ordinary civil courts. For the purpose of taking cognizance of the case the Special Court is required to consider the location or extent or value of the land alleged to have been grabbed or of the substantial

nature of the evil involved or in the interest of justice required and to give an opportunity of being heard to the petitioner [sub-section (1-A)]. It is plain that sub-section (2) opens with a non obstante clause and mandates that notwithstanding anything in the Code of Civil Procedure, the Code of Criminal Procedure, or in the Andhra Pradesh Civil Courts Act, 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 alleged to have been grabbed under the Act, shall be triable only in a Special Court constituted for the area in which the land grabbed is situated and the decision of the Special Court shall be final. Sub-section (2-B) specifically provides that notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act. It is left to the Special Court to determine the order in which the civil and criminal liability against a land grabber be initiated. Sub-section (6) provides that every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of the land grabbing and of the persons who committed such land grabbing and every judgment of the Special Court with regard to determination of title and ownership to, or lawful possession of, any land alleged to have been grabbed, shall be binding on all persons having interest in such land. It contains three provisos but they are not relevant for the present discussion.

Sub-section (8) brings about automatic transfer of any case pending before any court or authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of the Special Court if the cause of action on which such suit or proceeding is based, has arisen after the constitution of the Special Court. The provisions of sub-section (2) of Section 8 which commences with a non obstante clause confer jurisdiction on the Special Court and Section 15 of the Act directs that the provisions of the 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. A combined reading of these provisions leads to the conclusion that the jurisdiction of the civil court under Section 9 of the Code of Civil Procedure and under the Civil Courts Act is ousted and the Act which is special law will prevail and as such the Special Court will have jurisdiction in respect of the matters dealt with thereunder. (See: Sanwarmal Kejriwal v. Vishwa Coop. Housing Society Ltd. 1990 2 SCC 288)."

4. In N. Srinivasa Rao v. Special Court under the A.P. Land Grabbing (Prohibition) Act and Ors. (2006 (4) SCC 214) it was

held that actual dispossession has to be established and questions like acquisition of title by adverse possession can be decided only by the Civil Court. In paras 46 and 47 it was, inter-alia, held as follows:

"46. The main issue which surfaces in these appeals is whether the actions arising out of the dispute raised by the heirs of Uppari Ramaiah can be said to attract the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982. Admittedly, the transferees from Mir Riyasat Ali and Chandra Ramalingaiah as also P. Neelakanteswaramma have been in possession of the properties in dispute and at no point of time had their possession been disturbed. The attempts by the heirs of Uppari Ramaiah to dispossess the said transferees could at best be said to be an attempt to gain possession of the lands without actually obtaining possession thereof, which would not constitute an act of land grabbing within the meaning of the A.P. Land Grabbing (Prohibition) Act, 1982. We agree with both Mr Venugopal and Mr Nariman that in order to constitute an act of land grabbing, an attempt to dispossess must be followed by actual dispossession which would then constitute land grabbing so as to attract the penal provisions of the 1982 Act.

47. These appeals should fail on the said ground alone but it has also been argued, and, in our view, quite rightly so, that the initial document executed by Uppari Ramaiah in favour of Mir Riyasat Ali on 8-2-1961 was void since Uppari Ramaiah did not have any saleable interest in the land at that stage having regard to the express prohibition under Sections 47 and 49 of the Tenancy Act of 1950. We are unable to agree with Mr Parasaran that this was merely a voidable transaction and was capable of being avoided without the defect being cured under Section 50-B of the said Act. It was all the more so since the transfer was being made by a protected tenant as an agriculturist to a non-agriculturist which has also been expressly prohibited under the Act. That Uppari Ramaiah was aware that the lands were agricultural in nature is evident from the application filed before the learned Special Judge in which the said lands were described as "dry agricultural lands". Except for the fact that the said lands were now included within an urban area there is nothing to show that the user of the same had been altered with the passage of time. The decision in Sarifabibi case 5 cited by Mr Parasaran does not, therefore, help his clients' case. The scheme of the Tenancy Act of 1950 is reflected in Section 30 of the Act which prohibits subdivision or sub-letting of any land by a tenant or assignment of any interest held by him therein. The preamble to the Act provides that it was expedient inter alia to amend the law regulating the relations of landlords and tenants of agricultural lands and the

alienation of such lands and to enable the landholders to prevent excessive subdivision of agricultural holdings. In our view, in a proceeding before the Special Court the only issue which fell for decision is whether there has been an act of land grabbing as alleged and who is the guilty party. The Special Court has no jurisdiction to decide questions relating to acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of the civil courts. The learned Special Judge apparently travelled beyond the jurisdiction vested in him under the 1982 Act in deciding that even if the provisions of Section 47 of the Act were a bar to transfer without the sanction of the Tahsildar, the occupants of the land had perfected their title thereto by way of adverse possession."

5. As rightly submitted by the learned counsel for the appellants, the view expressed by two Benches of this Court are contradictory.

6. Above being the position, we refer the matter to a larger Bench. The records may be placed before the Hon'ble the Chief Justice of India for necessary orders.