CASE NO.:
Appeal (civil) 3942 of 2002

PETITIONER:
A.P. HOUSING BOARD

RESPONDENT:
MOHAMMAD SADATULLAH & ORS

DATE OF JUDGMENT: 13/04/2007

BENCH:
C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL NOs. 3943/2002 and 3989/2003

C.K. THAKKER, J.

All these appeals are filed against a common judgment and order passed by the High Court of Judicature, Andhra Pradesh at Hyderabad on March 29, 2000 in various writ petitions. Those writ petitions were filed by the petitioners (Andhra Pradesh Housing Board, land-owners and contesting respondents) aggrieved by the judgment and order passed by the Special Court established under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as 'the Act') in Land Grabbing Case (L.G.C.) No. 137 of 1989 on September 4, 1995.

The litigation has a chequered history and to understand the controversy raised by the parties in the present group of appeals, it is necessary to bear in mind the facts and circumstances under which this Court is called upon to resolve the controversy.

One Farhatulla, father of original petitioner Nos. 1 to 3 and husband of petitioner No.4 before the Special Court, was the owner of land bearing Survey Nos. 45-48, admeasuring 45 acres, of Yousufguda village in the limits of Golkonda Mandal, Hyderabad in the State of Andhra Pradesh. It appears that the Andhra Pradesh Housing Board wanted the land for a public purpose i.e., for the construction of dwelling units for its employees ('Vengal Rao Nagar Housing Board Colony'). A requisition was, therefore, made for acquisition of land under Section 22A of the Andhra Pradesh Housing Board Act, 1962 (hereinafter referred to as 'the Housing Board Act') for 'Housing Scheme'. A notification was issued on August 5, 1965 and was published in Government Gazette on August 26, 1965. Special Deputy Collector was authorized by the Government by an order dated October 24, 1967 to exercise power under the Land Acquisition Act, 1894. Notification under Section 4(1) was issued on March 1, 1968. Notices were also given to the persons interested in the land and for hearing of objections. An inquiry under Section 5A was conducted and final notification under Section 6 was issued on December 30, 1968. In the final notification, it was stated that the land admeasuring 45 acres of Survey Nos. 45 to 48 would be required for public purpose. Notices under Sections 9 and 10 were issued and an Award No.5 was passed on

December 31, 1971 by the Special Deputy Collector, Land Acquisition, Housing Board. The said Award was not challenged by any party and it had become final and binding. It is also clear from the record that though the acquisition was in respect of 45 acres of land and the Award was also passed for 45 acres, the Housing Board could take possession of only 43 acres land. It could not acquire possession of two acres of land since it was occupied by hut dwellers. In the Award itself, a direction was given that an amount of Rs.50,094/- which was the compensation towards two acres of land which could not be taken possession of because of existence of huts, should be deposited in the treasury and such amount should be paid to the land-owners only after they evict the hut dwellers and deliver possession of the said land to the Housing Board. The Land Grabbing Case relates to the said two acres of land which will hereafter be referred to as the 'petition schedule land'.

The land-owners had not received compensation of Rs.50,094/- in respect of two acres of land. They, therefore, asserted that they continued to remain owners of the land and submitted an application to the Municipal Corporation of Hyderabad (MCH) to sanction layout for sub-division of two acres of land of Survey No.45. The MCH, however, asked the land-owners to furnish 'No Objection Certificate' (NOC) from the Housing Board as also Clearance Certificate (CC) from the Special Officer and Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976. Since NOC was not granted by the Housing Board nor layout sanctioned by MCH, the land-owners filed a petition being Writ Petition No. 4194 of 1988 challenging the requirement of NOC by the Housing Board and directing MCH to sanction layout without insisting for NOC from the Housing Board and declaring that land acquisition proceedings in respect of the said land had lapsed. The High Court allowed the petition and granted the relief by judgment and order dated December 8, 1988. It was held by the High Court that the possession could not be taken by the Housing Board of two acres of land nor the amount was paid to the owners and the proceedings lapsed. In view of the findings recorded by the High Court in the Writ Petition, the petitioners-land-owners filed Land Grabbing Case (L.G.C.) No. 137 of 1989 in the Special Court under the Act and prayed for eviction of unauthorized encroachers in two acres of land owned by late Farhatulla, father of petitioner Nos. 1 to 3 and husband of petitioner No.4.

A counter was filed by respondent Nos.1 to 3, inter alia, contending that they and their forefathers had been in possession of the land said to have been encroached by them and they were cultivating it since time immemorial. They and their predecessors were in actual occupation of land and their possession was never objected by the petitioners. The Land Acquisition Officer who passed the Award also held that huts were found in existence on the 'petition schedule land' since about forty-five years. Thus, the respondents had also perfected their title by adverse possession. It was further stated that they had filed Original Suit No. 1550 of 1985 in the Court of IVth Additional Judge, City Civil Court, Hyderabad and had obtained interim injunction against the petitioners restraining them from interfering with their possession over the 'petition schedule land'. The respondents applied for layout from MCH and also constructed houses on the said land. It was stated that

when MCH caused obstruction against such construction, the respondents filed Writ Petition No. 29886 of 1986 and obtained interim relief. Farhatulla admitted in Criminal Case No. 259 of 1974 on the file of the IVth Metropolitan Magistrate that he had no title deeds in respect of the 'petition schedule land' and did not personally occupy it at any time except half an acre. It was further stated that petitioner No.1 also made similar statement in Original Petition No. 258 of 1979 on the file of the 1st Additional Judge, City Civil Court, Hyderabad. It was asserted that most of the residents in the 'petition schedule land' were paying land revenue and they should be deemed to be pattadars and in possession of the said land, notwithstanding the wrong entries made in the Revenue Records. As the petitioners had no title over the 'petition schedule land' and respondent Nos. 1 to 3 and their predecessors in title had acquired title by adverse possession over the land, they could not be treated as 'land grabbers'.

Respondent No. 4 filed a separate counter, contending that one Raj Lakshmana Rao, Jagirdar of Yousufguda village granted five acres of land of Survey No. 45 in the year 1940 as Inam which included the 'petition schedule land' to his father P. Venkaiah for clearing the jungle and for removing the boulders found in it. The said P. Venkaiah was regularly paying land revenue for that five acres of land and was cultivating it by raising dry crops. Ultimately, the said Jagirdar granted patta in favour of P. Venkaiah. The father of Respondent No.4 died long back and he found Urdu document with the Seal of Jagirdar of Yousufguda village. When translated, it was found to be a patta certificate issued by late Jagirdar Lakshmana Rao in favour of father of respondent No.4. Thus, he was the owner and possessor of land of Survey No. 45 admeasuring five acres and cannot be treated as 'land grabber'. He had been in occupation of the land being claimed by him since the time of his father, he is entitled to patta rights under Rule 2 of the Rules regarding grant of pattadar rights in Khalsa village.

Respondent Nos. 5 and 6 filed a common counter. It was their case that land in Yousufguda village was included in the municipal limits of MCH long back. It is now fully developed urban area used for building purposes. According to them, if the 'petition schedule land' belonged to late Farhatulla as was claimed by the petitioners, it should have been shown in their declaration under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976. But it was not included. According to these respondents, they purchased 1760 sq. yards from the 'petition schedule land' along with structures thereon which was surrounded by a compound wall. After obtaining necessary permission from MCH, they had made construction on the property. In the written submissions filed before this Court, they have stated that they have improved the property and have built a four-storey building in 1986 and are running a college since about two decades. They stated that Yousufguda village was an ex-Jagir village of Lakshmana Rao, the Jagirdar. Though it was claimed on behalf of the petitioners that late Farhatulla had purchased fifty acres of land of Survey Nos. 45 to 48, the sale deed in respect of the said transaction was not filed. It was further stated that the erstwhile Government of Hyderabad framed Rules in 1356 Fasli regarding the grant of pattadari

rights in non-Khalsa villages (Jagir villages). Under Rule 2, all persons who held Jagir lands paying land revenue in all the Jagirs were deemed to be pattadars of the land held by them, notwithstanding any oral or written agreement between the Jagirdars or any other person and also notwithstanding any entry contrary to that effect in the concerned village records. Rule 3 of the Rules required the Revenue Authorities to record the names of actual occupants. Rule 4 directed that the names of the Jagirdars should not be recorded in the Revenue Records as pattadars of lands, unless Jagirdars were personally cultivating such lands. Under Rule 5, the Jagir ryots were entitled to restoration of possession of the lands that were in their cultivation even if they were evicted by the Jagirdars. Rule 6 made the rights accrued to the Jagir ryots heritable. Though the Rules were not implemented prior to the abolition of Jagirs, the Revenue Officials were directed to implement them by Circular No.2 of 1949. Late Farhatullah worked as Collector in the Revenue Department and his services were terminated after a police action. In his capacity as the District Collector, he got the entries manipulated in the Revenue Records in his favour ignoring the existing facts as to occupation of Jagir ryots. Respondent Nos.5, 6 and other respondents, who were alleged to have grabbed the 'petition schedule land', were in actual occupation of the lands since more than 50 years. On that ground, possession of the land could not be taken over from them. Neither Farhatulla nor the Government could get the land vacated. Even if it were taken for granted that Farhatullah or the Government had title over the 'petition schedule land', their rights got extinguished as respondents had perfected their title over the said land by 'adverse possession'.

Respondent No. 8 raised contentions that his forefathers had been in possession of the land and were cultivating it. Respondent No.12 in his reply stated that he had purchased 577 square yards of land with a house situated in Bharat Nagar Colony which was a portion of 'petition schedule land' under a registered sale deed dated December 14, 1984 from respondent No.8 and he could not be described as 'land grabber'.

Respondent Nos. 14 and 15, in their common counter, contended that they had purchased 279 square yards of land which was the portion of 'petition schedule land' under a registered sale deed dated April 11, 1986 from one Kurupaiah who was the owner of the land. It was further stated that when Koteswara Rao tried to interfere with their possession, they filed Original Suit No. 1721 of 1986 in the Court of IXth Assistant Judge, City Civil Court, Hyderabad and obtained interim injunction. Respondent No.16 in his counter contended that he had purchased 350 square yards of the 'petition schedule land' under a registered sale deed dated March 4, 1985 from one Chandraiah who had occupancy rights over the said land. He also contended that he had perfected his title over it by 'adverse possession'. He was in occupation of the purchased land since then.

Respondent No.18, in his counter, stated that he had purchased 279 square yards of land which was a portion of 'petition schedule land' along with respondent No.17 under a registered sale deed dated April 11, 1980 from Kurupaiah who was having occupancy rights over the land. He stated that he had also perfected his title by 'adverse possession'. He refers to Original Suit No. 1719

of 1986 on the file of IIIrd Assistant Judge, City Civil Court, Hyderabad against Koteswara Rao who was said to be an agent of petitioner Nos.3 and 4. He stated that the suit was filed since Koteswara Rao tried to interfere with their possession.

Respondent No.19 filed a separate counter contending that he had purchased 234 square yards of land and a portion of the house by a registered sale deed dated April 15, 1986 from Kurupaiah and was in possession and enjoyment of it. Respondent No.35 in his reply contended that he and respondent No.34 purchased the house of 540 square yards from a portion of 'petition schedule land' from one P. Francie s/o Papaiah under a registered sale deed dated April 30, 1985 and were in occupation of the said land since the date of purchase. According to them, they were residing in their native village in Guntur District and in their absence, respondent No.22\027Housing Board demolished the existing structures and constructed a compound wall in the place of fencing in the year 1992 enclosing the site purchased by them. They could not do anything and they were entitled to get back their property from Respondent No.22.

Respondent No.36 in the counter contended that he purchased 800 square yards of land with a house which was a portion of the 'petition schedule land' from one M.P. Jeevaratnam, s/o Pochaiah under a registered sale deed dated April 30, 1985 and since then he was in occupation thereof.

Respondent No. 22 was A.P. Housing Board (impleaded later on). The Board, in its counter, inter alia, contended that it was the absolute owner and in possession of the land covered by Award dated 31st December, 1971. Under the Award, compensation in respect of two acres of land of Survey No.45 was to be paid to Farhatullah, the pattadar on his handing over vacant possession of the said land to A.P. Housing Board. The possession could not be given to the Board by the land-owner since there were huts thereon. The amount in respect of two acres of land, therefore, was ordered to be deposited. In the order of the High Court dated December 8, 1988 in Writ Petition No. 4194 of 1988, it was held that Award to the extent of two acres of land was illegal and respondent No.22 Board had not acquired any right over the said land. According to Housing Board, it had preferred a Writ Appeal against the said order and hence it could not be said that the order of the High Court had become final. In the duly sanctioned layout by the Director of Town Planning, it was clearly demarcated that two acres of land was covered by huts. As per the order passed in Writ Petition No. 1803 of 1991 filed against Housing Board by Indira Nagar Hut Dwellers Association, Yousufguda, the High Court directed the Association to approach a Civil Court for appropriate relief. According to the Board, it had erected a fencing, constructed a rest room and also displayed a board that the land so fenced belonged to the Board. The area within the fencing was in occupation of the Board under the Award dated December 31, 1971. Neither the petitioners nor the respondents had any right to claim the said area covered by the fencing.

An additional counter was also field by the Housing Board wherein it was contended that the land around which the Housing Board fenced, formed part of 43 acres of land, the possession of which was delivered to the

Board under Award No. 5 of December 31, 1971. According to the Board, the land claimed by the petitioners was not the one that was not taken possession by the Housing Board on the ground that the land was occupied by the hutment-dwellers, was encroached and huts were in existence. The 'petition schedule land' in Land Grabbing Case and the land in respect of which Writ Petition No. 4194 of 1988 was filed, were different. The land for which approval of the layout was sought from MCH and the land under the Writ Petition were also different. It was, therefore, submitted that neither the Board can be said to be 'land grabber' nor the petitioners were entitled to any relief.

On the basis of the pleading of the parties, the Special Court framed requisite issues, examined witnesses, perused the record, considered the evidence adduced by the parties and passed final order on September 4, 1995 partly allowing the petition and directing the Revenue Divisional Officer to take appropriate steps to deliver possession of the 'petition schedule land' to the petitioners by evicting the A.P. Housing Board within two months and report compliance in accordance with law. It, however, held that respondent Nos. 4 to 6 had perfected their title over the land possessed by them by 'adverse possession'. The Court granted liberty to respondent Nos. 14, 16 to 18 and 34 to 36 to establish before a regular Civil Court their title in respect of land in their possession clarifying that the judgment rendered by it would not affect the rights of those respondents.

In this connection, the Special Court concluded;

On the basis of the evidence on record, we gave finding that the Petition-Schedule site in this LGC is the site shown as ABCDEFGH in Ex. B-35 plan which is admittedly in occupation of R-4 to R-6 and R-22 (A.P. Housing Board). In view of our finding that R-4 to R-6 have perfected their title over the sites in their occupation which are shown in Ex. B-35 within the area marked as ABCDEFGH, we find that they cannot be treated as land grabbers. For want of evidence regarding the identity of the site alleged to have been grabbed by other respondents other than R-22, we find that they cannot be treated as land grabbers. It is not the contention of the petitioner that R-22 is a land grabber. Hence, we find that none of the Respondents in the LGC are land grabbers. As regards title of the site in the Petition-Schedule land covered by Ex. B-5, B-8, B-9, B-40 and B-41 Sale Deed, the Petitioners and the vendees under the said Sale Deeds are at liberty to establish their title in the result Civil Courts.

Being aggrieved by the judgment of the Special Court, writ petitions were filed in the High Court of Andhra Pradesh. Whereas A.P. Housing Board had grievance against the direction to hand over possession of two acres of land to the petitioners, original petitioners were aggrieved by the order of the Court in not allowing their petition in its entirety. Respondent No.4 as also respondent Nos. 34 to 36 were also not satisfied with the order passed by the Special Court and they also approached the High Court.

The High Court, by a common judgment dated March 29, 2000 dismissed all the petitions. The aggrieved

appellants have challenged the said decision in this Court. Leave was granted by this Court and appeals were admitted. All the appeals have now been placed for final hearing before us.

We have heard the learned advocates for the parties at length.

The learned counsel for A.P. Housing Board (C.A. No. 3942 of 2002) contended that the expression 'land grabber' in the Act cannot include the 'Government' or instrumentality of 'State' and neither the Government nor such instrumentality of 'State' can be held to be 'land grabber' under the Act. According to him, the expression 'person' would contextually mean natural person only and not artificial, legal or juristic person. It was also urged that Special Court established under the Act had no jurisdiction to pass an order of eviction against the Housing Board. The counsel submitted that the High Court was not justified in observing that it was open to the parties to establish their right to the property in any other forum. All questions 'under the Act' ought to have been decided by the Special Court keeping in view the relevant provisions of law. It was urged that when proceedings had been taken under the Land Acquisition Act and Award was passed for acquisition of 45 acres of land, it could not be held that the Housing Board had not become owner of two acres of land, possession of which could not be delivered to the Board by the land owners since the land was encroached upon by hutment dwellers. The land stood vested in the Housing Board free from all encumbrances and the land owners thereafter had no right, title or interest therein. It was admitted that though writ petition filed by the land owners was allowed by the High Court and the said decision had attained finality, the land covered by the decision was different. It was also argued that once the Special Court recorded a finding that Housing Board could not be said to be 'land grabber', it had no jurisdiction to issue any direction to the Revenue Authorities to handover possession of two acres of land to the land owners from the Housing Board. The only order which could have been passed by the Special Court was to dismiss the petition. It was, therefore, submitted that the appeal filed by the Housing Board deserves to be allowed by setting aside the order passed by the Special Court as well as by the High Court.

Civil Appeal No. 3989 of 2003 was filed by the respondent No. 4 in Land Grabbing Case. According to him, the Special Court as well as the High Court were right in upholding his contention that he was in adverse possession of the land and had become owner thereof. Both the Courts, however, were wrong in recording a finding that he had perfected his title only in respect of 770.55 square yards of land. According to him, he had perfected his title for five acres of land and his prayer deserves to be granted by this Court.

Civil Appeal No. 3943 of 2002 was filed by original petitioners-landowners. Their case is that they were the owners of the suit property and neither the Housing Board nor other respondents had any right, title or interest in the land. It was submitted that the Special Court committed an error of law in holding that some of the respondents including respondent No. 4 had perfected their title by way of adverse possession. Such a finding could not have been recorded by Special Court established under the Act. It was also submitted that both the Courts were right in holding that out of forty-five

acres of land said to have been acquired by the A.P. Housing Board, possession of only forty-three acres of land could be obtained by the Board and amount of compensation was paid for the said land. In respect of two acres of land, neither the possession could be taken by the Board nor amount of compensation was paid by it. Obviously the Housing Board did not become owner of two acres of land. The Housing Board, therefore, could not claim ownership over that land. The appellants, hence, applied for layout of two acres of land to MCH. But when MCH insisted for No Objection Certificate (NOC) from the Housing Board, they were constrained to approach the High Court and the High Court held that the Board had no right over two acres of land and the land owners continued to remain owners of the property. No appeal had been filed against the said order and it had become final and binding. In view of the said finding, the Special Court as well as the High Court were right in ordering handing over possession of the land to them. According to the appellants, however, the Special Court and the High Court were wrong in not granting relief against the other respondents. It was also contended that the Special Court exceeded its jurisdiction in entering into the question of adverse possession which was not in the domain of Special Court. Such a question could be decided only by a Civil Court. The High Court, in the circumstances, ought to have allowed the writ petition filed by the land-owners and ought to have set aside the finding as to ownership of respondents by adverse possession. It was, therefore, submitted that the appeal filed by the land-owners deserves to be allowed.

Before we deal with the contentions of the parties, it would be appropriate if we hurriedly glance the relevant provisions of the Act. The Preamble of the Act states that the Act has been enacted with a view to prohibit the activity of land grabbing in the State of Andhra Pradesh which has adversely affected public order and it was, therefore, necessary to arrest and curb immediately such unlawful activity.

In the statement of objects and reasons, it has been observed;

Statement of Objects and Reasons

"It has come to the notice of the Government that there are organised attempts on the part of certain lawless persons operating individually and in groups to grab either by force, or by deceit or otherwise lands belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf or any other private person. The land grabbers are forming bogus cooperative housing societies or setting up fictitious claims and including in large scale and unprecedented and fraudulent sales of land through unscrupulous real estate dealers or otherwise in favour of certain section of people, resulting in large scale accumulation of the unaccounted wealth. As public order is also adversely affected thereby now and then by such unlawful activities of land grabbers in the State, particularly in respect of urban and urbanisable land, it was felt necessary to arrest and curb such unlawful activities immediately by enacting a

special law in that regard."

It has been further stated:
"Whereas there are organized 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 co-operative 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 organized 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\005"

\027that the Act has been enacted.

Section 1 states that the Act extends to the whole of the State of Andhra Pradesh and applies to the lands specified therein. Section 2 is 'legislative dictionary' and defines certain terms. For our purpose, the terms 'land grabber' [clause (d)] and 'land grabbing' [clause (e)] are material and they may be reproduced;
2 (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 unauthorized 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 above mentioned acts, and also includes the successors in interest;
2 (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 unauthorized 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 unauthorized structures; and the term "to grab land" shall be construed accordingly",

Section 3 declares land grabbing in any form to be unlawful and an offence punishable under the Act. Section 4 prohibits land grabbing and prescribes punishment for committing an offence of land-grabbing. Section 5 is also a provision for other offences in connection with land grabbing and prescribes penalties. Section 6 does not spare even Companies from the consequences of conviction and punishment, if they commit an act of land-grabbing. Section 7 of the Act enables the Government to constitute Special Courts for the purpose of providing speedy inquiry into the alleged act of land grabbing and trial of cases in respect of the ownership and title to, or lawful possession of the land 'grabbed'. The relevant part of the said section reads thus;

"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.

(2) A Special Court shall consist of a Chairman and four other members, to be appointed by the Government.

(3) The Chairman shall be a person who is or has been a Judge of a High Court and of the other four members, two shall be persons who are or have been District Judges (hereinafter referred to as Judicial Members) and the other two members shall be persons who hold or have held a post not below the rank of a District Collector (hereinafter referred to as Revenue Members ):

Provided that the appointment of a person who was a Judge of a High Court as the Chairman of the Special Court shall be made after consultation with the Chief Justice of the High Court concerned;

Provided further that where a sitting Judge of a High Court is to be appointed as Chairman, such appointment shall be made after nomination by the Chief Justice of the High Court concerned, with the concurrence of the Chief Justice of India.

(4) The Government from time to time likewise reconstitute the Special Court constituted under sub-section (1) or may, at any time abolish such Special Court.

(4A) The Chairman or other member shall hold office as such for a term of two years

from the date on which he enters upon his office, or until the Special Court is reconstituted or abolished under sub-section (4), whichever is earlier.

(4B)(a) Subject to the other provisions of this Act, the jurisdiction, powers and authority of the Special Court may be exercised by benches thereof one comprising of the Chairman, a judicial member and a Revenue member and the other comprising of a Judicial Member and a Revenue Member.

(b) Where the bench comprises of the Chairman, he shall be the Presiding Officer of such a bench and where the bench consists of two members, the Judicial Member shall be the Presiding Officer.

(c) It shall be competent for the Chairman either suo motu or on a reference made to him to withdraw any case pending before the bench comprising of two members and dispose of the same or to transfer any case from one bench to another bench in the interest of justice.

(d) Where it is reasonably apprehended that the trial of civil liability of a person accused of an offence under this Act, is likely to take considerable time, it shall be competent for the Chairman to entrust the trial of the criminal liability of such offender to another bench in the interest of speedy disposal of the case.

(e) Where a case under this Act is heard by a bench consisting of two members and the members thereof are divided in opinion, the case with their opinions shall be laid before another judicial member or the Chairman and that member or Chairman, as the case may be, after such hearing as he thinks fit, shall deliver his opinion and the decision or order shall follow that opinion.

(5) The quorum to constitute a meeting of any bench of the Special Court shall be two.

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(5D) (i). Notwithstanding anything in the Code of Civil Procedure, 1908 (5 of 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.

(ii) Notwithstanding anything contained in Section 260 or Section 262 of the Code of Criminal Procedure, 1973 (2 of 1974) every offence punishable under this Act shall be tried in a summary way and the provisions of Sections 263 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial.

(iii) When a person is convicted of an offence of land grabbing attended by criminal force or show of force or by criminal intimidation, and it appears to the Special Court that, by such

force or show of force or intimidation the land of any person has been grabbed, the Special Court may if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property.

(6) No act or proceeding of the Special Court shall be deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the Constitution or re-constitution thereof.

Section 7A allows creation of Special Tribunals and prescribe their powers. Section 8 deals with powers and procedure of Special Courts. Under Section 9, Special Courts have all the powers of Civil Court and the Court of Session in conducting the cases before it. Section 10 declares law relating to burden of proof and enacts that where in any proceeding under the Act, a land is alleged to have been grabbed and prima facie case is made out, it will be presumed that the person is a land grabber and burden of proving that the land had not been grabbed by him shall be on such person. Whereas Section 14 protects persons acting in good faith, Section 15 gives overriding effect to the Act over other laws.
The scheme of the Act is thus clear that it is a special legislation enacted with a view to deal with and decide cases of land grabbing expeditiously. In interpreting the provisions of the Act, the said objective of the legislature has always to be kept in view.
The provisions of the Act came up for consideration before this Court in few cases. In Konda Lakshmana Bapuji v. Government of A.P. & Ors., (2002) 3 SCC 258 : JT 2002 (2) SC 253, a decision rendered by Special Court under the Act and confirmed by the High Court came to be challenged in this Court. One of the considerations before this Court was as to whether the Special Court could entertain a suit when there was bona fide dispute of title by the other side. The Court considered the relevant provisions of law and held that when the petitioner alleges that the respondent is land grabber, Special Court has jurisdiction to inquire into the dispute and it can pass an order and issue direction if it comes to the conclusion that there was 'land grabbing' and the respondent is a 'land grabber'. The Court considered the definition clause and the expressions 'land grabber' and 'land grabbing' and held that whenever there is land grabbing under the Act, proceedings can be initiated and the case can be decided by Special Court constituted under the Act. The Court also held that for the purpose of taking cognizance of a case under the Act, existence of an allegation of any act of land grabbing is sine qua non and not the truth or otherwise of the allegation. But to hold the person to be a 'land grabber', it is necessary to find that the allegations satisfying the requirement of land grabbing are proved. To make out a case under the Act, therefore, the petitioner before the Special Court must plead and prove two ingredients, namely, possidendi i.e., factual possession and animus i.e., intention of the person who is alleged to have grabbed land. If the two conditions are fulfilled, Special Court has jurisdiction to deal with and decide the matter and an appropriate order can be passed under the Act. It was also held that the

jurisdiction of High Courts under Article 226 as also of this Court under Article 136 of the Constitution is limited and findings of the fact arrived at by the Special Court cannot be interfered with in exercise of constitutional jurisdiction. The law laid down in Konda Lakshmana Bapuji was reiterated and quoted with approval in State of A.P. v. P.V. Hanumantha Rao (dead) through L.Rs. & Another, (2003) 10 SCC 121 : JT 2003 (7) SC 438 by observing that an order passed by the Special Court can be interfered with by a High Court in exercise of power of judicial review where (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard of the provisions of law, and (2) a grave injustice or gross failure of justice has occasioned thereby. [See also Gouni Satya Reddi v. Government of A.P. & Ors., (2004) 7 SCC 398].

So far as the facts of the present proceedings are concerned, forty-five acres of land of Survey No. 45 belonged to the land-owners was sought to be acquired for the purpose of construction of quarters by the A.P. Housing Board. Forty-three acres of land only could be acquired and possession of two acres of land could not be obtained by the Board. Amount of compensation was paid to the land-owners in respect of forty-three acres of land only. The land-owners, therefore, applied to MCH for layout for two acres of land. When MCH insisted for NOC by the Housing Board, the land-owners filed a writ petition in the High Court of Andhra Pradesh that in view of the fact that they were not paid compensation for two acres of land and actual possession of the land had never been received by the Housing Board, it had no right whatsoever over the said land. MCH, therefore, could not insist on obtaining of NOC from Housing Board. The High Court heard both the parties. It also referred to orders issued by A.P. Housing Board and an order passed by the Government on March 13, 1979. In paras 4 & 5 of the order, the Government observed:

"4. The Chairman, A.P. Housing Board has reported that there is a lot of litigation involved on the land in question and it is not possible to take possession of this piece of two acres of land even if houses are allotted to the satisfaction of the rival groups. The amount of Rs.50,094/- belonging to the Housing Board is unnecessarily locked up with the special Deputy Collector (Land Acquisition) and either the special Deputy Collector of the Board is not in a position to decide whether hut dwellers have got any claim over this land since the Special Deputy Collector (Land Acquisition) has accepted Sri Farhatullah is the owner of the land in the award passed by him. Moreover it is also reported that this piece of land is shown as long spice in the sanctioned layout of the colony. As such, the Board is not interested to have this land for taking up a Scheme. Therefore, the Chairman has suggested that the Special Deputy Collector (Land Acquisition) may be instructed to de-notify this land from acquisition and return the amount deposited with him by the Housing Board.

5. Government having examined the matter carefully accept the proposal of the Chairman,

A.P. Housing Board and direct the Special Deputy Collector, Land Acquisition (Hyderabad) to send proposals for denotification of the land in question from acquisition and return the amount deposited with him by the A.P. Housing Board."

On the basis of the said order, the High Court observed that no land could be acquired without payment of compensation. No provision under the Act was shown to the Court which obliged the owner to handover vacant possession of the land and to withhold payment of compensation. It was not a voluntary sale or purchase. It was a compulsory acquisition. If the acquiring bodies felt that there was difficulty in getting possession, it was for them to make up their mind whether to acquire or not to acquire such land. No obligation, however, could be imposed upon the owner to handover vacant possession of land. No order as to payment of compensation could be made subject to condition of handing over possession by the owner. Such Award could not be said to be an Award contemplated under the Land Acquisition Act. Though the proceedings started in 1965 and the Award was passed in 1971, no compensation was paid till the matter was decided by the High Court in 1988.
The Court, therefore, stated;
"The acquisition of land without payment of compensation is wholly without jurisdiction and the Award is a nullity."

The Court concluded;
"In the instant case, the circumstances do not warrant withholding of the relief which the petitioners are otherwise entitled. The acquisition of the land without providing for compensation is wholly illegal. The payment of compensation was made dependant upon certain conditions to be fulfilled by the party which is not envisaged under the Land Acquisition Act. The lands can be acquired only in accordance with the provisions of the Act and the award is unreasonable, oppressive and unfair. The authorities cannot say that they will keep the land under acquisition without paying the compensation amount. Compensation was not paid for over 23 years. Such an award is alien to the scheme and intendment of the Land Acquisition Act and is void. The entire acquisition proceedings must be deemed to have lapsed. The petitioners are therefore entitled to ignore the award and proceed to deal with the land which admittedly belongs to them."
(emphasis supplied)

Regarding insistence by MCH for NOC from the Housing Board, the High Court held that since the Housing Board had no title to the property and admittedly no possession was received by the Board, requirement of NOC could not be insisted. Moreover, the Award itself for two acres of land could not be said to be legal. MCH was, therefore, directed to consider the application of the land-owner without insisting for such

certificate. The petition was accordingly allowed.
Though in the appeal filed by the A.P. Housing Board in the present proceedings, it was asserted that the decision of the High Court in Writ Petition No. 4194 of 1988 was not final as appeal was filed against the said decision, at the time of hearing of the appeal, it was admitted that no such appeal was filed against the judgment of the High Court and the decision had attained finality. The consequence of the decision of the High Court in the circumstances is that in respect of two acres of land, proceedings under the Land Acquisition Act were held bad, award nullity and the land-owner continued to remain owner of the property with all rights, title and interest therein. If it is so, neither the Housing Board nor any other person can have any right over the said land. The Land Grabbing case instituted by the original land-owners in respect of two acres of land was, therefore, maintainable and the Court was required to decide the case in accordance with law. It is immaterial that the Housing Board is merely juristic person and not natural person.

The Special Court, in our opinion, considered the decision of the High Court in earlier petition in its proper perspective and recorded a finding that Housing Board was not the owner of the 'petition schedule land' as claimed by it. It was also right in observing that late Farhatulla was held to be pattadar of two acres of 'petition schedule land' and the said finding was not questioned by the contesting respondents other than respondent No.22 (A.P. Housing Board) at any time.

The above finding recorded by the Special Court was confirmed by the High Court in the writ petition. It held that the writ petition filed by the Housing Board was not maintainable. We see no infirmity in the said finding.

It was no doubt contended by the learned counsel for the Housing Board that the Special Court acquires jurisdiction to pass an appropriate order under the Act only if it comes to the conclusion that there is 'land grabbing' and the respondent is a land grabber. Once the Court holds that the respondent is not a 'land grabber', it has no jurisdiction to direct vacating the property or handing over possession to the petitioner and such action is not known to law. It was submitted that in the instant case, according to the Special Court, Housing Board was not a 'land grabber'.

In this connection, the counsel drew our attention to Issue No.3 framed by the Special Court. The said issue reads thus:

"Whether the respondent is land grabber within the meaning of the Act?"

On consideration of the evidence on record, the Court held that the 'petition schedule land' was shown to be ABCDEFGH in Exhibit B-35 plan which was in occupation of respondent Nos. 4 to 6 (private respondents) and respondent No. 22 (A.P. Housing Board). The Special Court then recorded a finding that respondent Nos. 4 to 6 had perfected their title over the land in their occupation which were shown in Ex. B-35 within the area marked as ABCDEFGH and, therefore, those respondents could not be treated as land grabbers. The Court then stated; "For want of evidence regarding the identity of the sites alleged to have been grabbed by other respondents other than respondent No. 22, we find that they cannot be treated as land grabbers."

While dealing with Issue No. 5 as to relief, however, the Court allowed the petition in part holding the title of the petitioners over the 'petition schedule land' which was shown as ABCDEFGH in Ex. B-35 excluding the area in occupation of respondent Nos. 4 to 6 and declaring the petitioners to be owners thereof and issued direction to Revenue Development Officer to take steps to deliver possession of the land to the petitioners by evicting respondent No. 22 (A.P. Housing Board) within two months from the date of the receipt of the order and to report compliance. The High Court upheld that part of the order of the Special Court.

In our opinion, the learned counsel for the land-owners\027original petitioners is right in contending that when the acquisition proceedings and Award in respect of two acres of land was held bad and nullity by the High Court in previous proceedings, it was not open to the Special Court or the High Court to ignore the said order. Moreover, the Special Court was not right in observing that it was not alleged by the land-owners that the contesting respondents (private parties or A.P. Housing Board) were not land grabbers. It was expressly stated by the land-owners that they continued to remain owners of two acres of land in view of non delivery of possession of land to Housing Board and non payment of compensation thereof. The writ petition filed by them in respect of two acres of land had been allowed by the High Court in 1988 and the contention of the Housing Board was negatived that it had become owner of the land. It was also not correct to contend that the land was different, being ABCDEFGH in Ex.B-35, in possession of respondent Nos. 4 to 6 and respondent No.22. In fact, the operative part of the order extracted hereinabove in the earlier part of the judgment clearly shows that petition was partially allowed as to title of the petitioners over the 'petition schedule land' shown as ABCDEFGH in Ex. B-35 excluding the area in the occupation of respondent Nos. 4 to 6. It was, therefore, not correct to say that the petitioners-land-owners had not asserted that they were the owners of the 'petition schedule land' nor it can be contended that the land-owners had not alleged that the respondents were not land grabbers.

The question then relates to claim of appellant before this Court in Civil Appeal No. 3989 of 2003 instituted by original respondent No.4. As already adverted earlier, the Special Court has held that respondent Nos. 4 to 6 had perfected their title by adverse possession and hence they could not be termed as 'land grabbers'. According to the Special Court as well as the High Court, however, they had become owners by adverse possession in respect of 770 sq. yards of land but according to respondent No. 4\027appellant before this Court, he has become owner by adverse possession of five acres of land. The contention of the land-owners, on the other hand, is that a finding as to ownership by adverse possession could not have been recorded by Special Court constituted under the Act and the Special Court was in error in recording such finding. The land-owners also contended that in case of other respondents, the Special Court held that disputed questions of fact were involved as to whether they had become owners by adverse possession or not and in the opinion of the Special Court, such question can be decided only by a competent Civil Court. Liberty was, therefore, granted to those respondents to approach an appropriate Civil Court

if they desired to raise such issue. It was also contended that even in respect of respondent Nos. 4 to 6, the Special Court observed that if their case was that they had become owners by adverse possession of five acres of land, they could approach a Civil Court and the decision rendered by Special Court would not come in their way. It was, therefore, submitted by the land-owners that the Special Court ought not to have recorded any finding as regards adverse possession and ought have allowed the contesting respondents by granting liberty to approach Civil Court to establish their rights over any part of the land by adverse possession.

In this connection, reference was made to a recent decision of this Court in N. Srinivasa Rao v. Special Court under the A.P. Land Grabbing (Prohibition) Act & Others, (2006) 4 SCC 214. A two Judge Bench of this Court in the above case held that the Special Court constituted under the Act has no jurisdiction to decide question as to acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of Civil Court.

The learned counsel for respondent No.4, on the other hand, relied on Konda Lakshmana Bapuji and submitted that a three Judge Bench of this Court in the said decision has held that such question can be decided by Special Court. In paragraph 53 of the decision, this Court observed:

"53. The question of a person perfecting title by adverse possession is a mixed question of law and fact. The principle of law in regard to adverse possession is firmly established. It is a well-settled proposition that mere possession the land, however long it may be, would not ripe into possessory title unless the possessor has 'animus possidendi' to hold the land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would, in an appropriate case, be sufficient indication of the animus possidendi to hold averse to the title of the true owner. But such an assertion of title must be clear and unequivocal though it need not be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as the animus possidendi must be shown to exist. Where, however, at the commencement of the possession there is no animus possidendi the period for the purpose of reckoning adverse possession will commence from the date when both the actual possession and assertion of title by the possessor are shown to exist. The length of possession to perfect title by adverse possession as against the Government is 30 years."

It was also submitted that in N. Srinivasa Rao, which was decided by a two Judge Bench, the attention of the Court was not invited to the three Judge Bench decision of this Court in Konda Lakshmana Bapuji and, the subsequent decision is per incurium.

In our opinion, it is not necessary to enter into larger question in the light of the factual scenario before us. As we have already observed earlier, in the instant case, in a petition filed by the land-owners as early as in 1988, the High Court of Andhra Pradesh held that land acquisition proceedings for two acres of land of Survey No. 45 could not be said to be in consonance with law and the Award was declared null and void. The

ownership of the original land-holders remained intact. The petition was accordingly allowed and MCH was directed to take appropriate action on application of the land-owners to sanction layout without insisting NOC by the A.P. Housing Board. Even in present proceedings, a contention was raised by almost all respondents that they had perfected title by remaining in adverse possession. Liberty was granted by the Special Court to the contesting respondents to establish their right by approaching a competent Civil Court. Even in respect of respondent No. 4 (Civil Appeal No. 3989 of 2003), the Special Court held that if his claim is that he has become owner by adverse possession in respect of five acres of land, it would be open to him to approach Civil Court for the said purpose. Again, the order passed in favour of land-owners in 1988 in Writ Petition No. 4194 of 1988 had attained finality and is no more under challenge. There is an additional reason also for taking this view. As observed earlier, there is some controversy as to identity of land in dispute, which can be resolved by a Civil Court on the basis of evidence to be led by the parties. In the light of peculiar facts and attending circumstances, in our opinion, it would be appropriate if the finding as to adverse possession is set aside by granting liberty to all or any of the respondents to take appropriate proceedings in accordance with law by approaching a competent Civil Court if they claim title on the basis of adverse possession.

For the foregoing reasons, in our opinion, the appeals filed by A.P. Housing Board and respondent No.4 deserve to be dismissed and are accordingly dismissed. The appeal filed by the original petitioners-land-owners deserves to be allowed and is accordingly allowed by setting aside the finding recorded by the Special Court and confirmed by the High Court on the question of adverse possession, however, by granting liberty to the contesting parties to take appropriate proceedings by approaching a competent Civil Court if they (or any of them) claim title on the basis of adverse possession. In the facts and circumstances, however, there shall be no order as to costs.