

CASE NO.:
Appeal (civil) 6731 of 1994

PETITIONER:
L.L. SUDHAKAR REDDY AND ORS.

RESPONDENT:
STATE OF A.P. AND ORS.

DATE OF JUDGMENT: 09/08/2001

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. PHUKAN

JUDGMENT:
JUDGMENT

WITH
Writ Petition No. 904/1992.

2001 Supp(1) SCR 383

The following order of the Court was delivered : CA 6731/1994.

This appeal is directed against the judgment and order of the Division Bench of the High Court of Andhra Pradesh at Hyderabad in Writ Appeal No. 680/1992 dated July 23, 1992, confirming the order of the learned Single Judge passed in W.P. No. 9846/1989 dated June 16, 1992 by which the writ petition filed by the appellants, was dismissed.

The Mandal Revenue Officer, Golconda, representing the State of Andhra Pradesh, the first respondent, filed an application under Section 8 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as 'the Act') numbered as LGC 21 of 1988 in the Special Court under the Act (for short the Special Court). The material allegation is that application was that the first appellant encroached upon the government land to an extent of 5 acres in Survey No. 403/1, situated at Shaikpet Village, Banjara Road, No. 10, Hyderabad (for short 'the disputed land'), made plots and sold them to respondents 2 to 15 before the Special Court who were treated as interested persons. It was alleged that as per the government records plot nos. 11,12 and 13 in Survey No. 403/1 of Shaikpet Village were unrecognised plots and were treated as government lands. On that application the Special Court took cognizance of the case and issued notification under Section 8(6) of the Act in the Andhra Pradesh Gazette (Extraordinary) of November 7, 1988. On the material placed by the Revenue Officer as per the verification report, persons who had been in possession of the disputed land were also issued notices. Though they were parties to LGC 21/88 in the Special Court, they are not impleaded in this appeal. The first appellant pleaded, inter alia, that he had agreed to purchase the disputed land from its owners and possessors, appellants 2 to 4, and obtained possession under the agreement for sale. He denied the allegation that he grabbed the disputed land.

After considering the evidence placed on record the Special Court held that the government was the owner of the disputed land and that the respondents were land grabbers and ordered them to be evicted from the disputed land. It was made clear that notice under proviso to sub-section 7 of Section 8 was not issued. Thus the application filed by the first respondent (LGC 21/88) was allowed by the Special Court on June 1, 1989.

Appellants 2 to 4 who were not parties before the Special Court, joined appellant no. 1 in challenging the validity of the said order of the Special Court before the High Court in W.P. No. 9846/1989. The learned Single Judge who dealt with the case took the view that: (1) the appellants had the opportunity of having the impugned order reviewed under Section 17-A

of the Act; (2) if they felt aggrieved by the judgment of the Special Court nothing prevented them from filing a suit for declaration of their title and right; and (3) on the merits of the case the judgment of the Special Court was perfectly justified on the basis of the evidence placed before it, there was no lack of jurisdiction in the Special Court, no error apparent on the face of the record and no violation of principles of natural justice.

The said order of the learned Single Judge was questioned in Writ Appeal No. 680/92 before the Division Bench of the High Court which reiterated the conclusions referred to above and dismissed the writ appeal on July 23, 1992. It is against that order the present appeal is filed by Special Leave.

We have heard Mr. P.S Mishra, the learned senior counsel for the appellants and Ms. K. Amreshwari, learned senior counsel appearing for the respondents

In the view we have taken, we do not propose to express any opinion on merits of the case. Suffice it to observe that having made the observation that the appellants could have availed the remedies on review under Section 17-A of the Act and the suit for declaration of title and right, in our view, the learned Single Judge ought not to have expressed any, opinion on the merits of the case because after the High Court has put its seal of approval on the judgment and order of the Special Court, the result of the Review Application and the Suit would become a foregone conclusion. Further in regard to the remedy of the Suit, having regard to the provisions of sub-Section(2) of Section 8 read with Section 15 of the Act, no suit for title in respect of the disputed land which is alleged to be a land grabbed by the first appellant, could be entertained by the Civil court. It may be apt to point out that under sub-section 8 of Section 8 any case, pending before any Court or other authority immediately before the constitution of a Special Court as would have been within the jurisdiction of such Special Court, stood transferred to the Special Court as if the causes of action on which the suits or proceeding is based had arisen after the constitution of the Special Court. In other words the suit for declaration of title by the appellants would not be maintainable. For the above reasons, the order of the Division Bench under challenge confirming the order of the Single Judge is set aside, the Writ Petition is restored to the file of the High Court and the case is remitted to the High Court for deciding the writ petition afresh in accordance with law.

It is needless to mention that we have not expressed any opinion on the merits of the case and it will be open to the parties to raise such contentions as are permissible to them in law. The appeal is accordingly allowed.

W.P. No. 904/1992.

Mr. PS Mishra, learned senior counsel appearing for the petitioners, seeks permission to withdraw the writ petition with liberty to approach the High Court for appropriate relief. The writ petition is dismissed as withdrawn.

The parties shall bear their own costs in the appeal as well as in the writ petition.