

CASE NO.:
Appeal (civil) 2630 of 1989

PETITIONER:
M/S. PRAGA TOOLS CORPORATION LTD.

Vs.

RESPONDENT:
SMT. MAHBOOBUNNISSA BEGUM & ORS.

DATE OF JUDGMENT: 04/05/2001

BENCH:
V.N. Khare & S.N. Variava

JUDGMENT:

(With C.A. Nos. 2763-64/1989, C.A. No. 2762 of 1989 and C.A.Nos. 4874-75 of 1989)

J U D G M E N T

S.N. VARIAVA, J.
L...I...T.....T.....T.....T.....T.....T.....T...J

All these Appeals can be disposed of by this common Order. Parties are being referred to in their capacity in Civil Appeal 2630 of 1989.

Briefly stated the facts are as follows. In the State of Andhra Pradesh there are two adjoining villages viz. Moosapet and Kukatpalli. Kukatpalli was a khalsa (dewani) village where the lands were held by patedars. Moosapet was sarfe-khas village. Sometime in 1963 the Government of Andhra Pradesh (Respondent 10) allotted lands in Moosapet village in favour of various parties. Whilst so doing the Respondent 10 allotted to Appellants (M/s. Praga Tools Corporation Ltd.) an area of 195 acres 33 guntas in Survey No. 210/1 in Moosapet village. Possession was then given to Appellants.

Immediately on the transfer of land Smt. Mahboobunnissa Begum and ors. (Respondents 1 to 9) filed a Writ Petition before the High Court of Andhra Pradesh claiming that the Government had purported to allot to Appellants lands belonging to them without having acquired the said land. It was claimed that the lands, which were allotted and of which possession was given, bore Survey Nos. 362 to 373 and part of survey No. 374 of Kukatpally village. In this Writ Petition the Government filed a counter affidavit stating that there was a dispute as to the question of title. On the basis of this counter affidavit the Writ Petition was dismissed with directions to approach the Civil Court.

In December 1974 Respondents 1 to 9 filed Suit No. 102 of 1975 seeking possession over the land in dispute or in the alternative compensation for illegal dispossession. One Amina Begum (Respondent 11) had also filed Suit No. 12 of 1974 claiming to be the owner of the same land. It must be mentioned that Respondents 1 to 9 claimed as heirs of

previous owner Ghulam Khader. Respondent 11 made a claim to these lands on basis of an alleged Sale Deed in her favour from the said Ghulam Khader.

On 20th April, 1982 the trial Court decreed Suit No. 102 of 1975 and dismissed Suit No. 12 of 1974. Appellants and the Respondent 10 (Government) were held to be jointly and severally liable to pay compensation for the lands wrongly taken over. Against the decree dated 20th April, 1982, Appeals were filed both by the Government as well as Appellants. An Appeal was also filed by Respondent 11 against the dismissal of her suit. All these Appeals were decided by the High Court by a common Judgment dated 9th of September, 1988. By this Judgment the Appeal filed by Respondent 11 (Amina Begum) was dismissed. The Appeal filed by Appellants (Praga Tools Corporation Ltd.) was also dismissed. However, the Appeal filed by the Government was allowed in part to the extent that it was held that as the Government had handed over to Appellants only an area of 195 acres and 33 guntas, the compensation which was to be paid was only in respect of 195 acres and 33 guntas. It was held that if there was any excess land, over and above 195 acres and 33 guntas, that was certainly the property of Respondents 1 to 9.

As against this Judgment Appellants has filed Civil Appeal No. 2630 of 1989. The State of Andhra Pradesh has filed Civil Appeals bearing Nos. 2763-64 of 1989. Smt. Mahboobunnissa Begum & Ors have filed Civil Appeal No. 2762 of 1989 and Amina Begum has filed Civil Appeal Nos. 4874-75 of 1989. Between Respondents 1 to 9 and Respondent 11 there were conflicting claims in respect of the suit property. As stated above Respondents 1 to 9 claimed the lands as heirs of Ghulam Khader. Respondent 11 claimed the lands on the basis of an alleged Sale Deed. Both the trial Court as well as the Appellate Court have recorded findings of fact that Amina Begum has not been able to prove the Sale Deed. These findings of fact are based on evidence and we find no infirmity in the Judgments of the Trial Court as well as the Appellate Court in this behalf. Therefore the claim of Respondent 11 (Amina Begum) cannot be upheld and Appeal Nos. 4874-75 of 1989 stand dismissed. We have heard the parties. In spite of voluminous record the dispute is capable of resolution quite easily. Respondents 1 to 9 claim ownership of Survey Nos. 362 to 373 in Kukatpalli village. Government of Andhra Pradesh claims no right in Survey Nos. 362 to 373 of Kukatpalli village. The Government claims ownership of and has allotted to Appellants lands on footing that they are part of Survey No. 210/1 of Moosapet village. The main question is whether these lands are in Survey Nos. 362 to 373 of Kukatpalli village or they are in Survey No. 210/1 of Moosapet village. If the lands are in Survey Nos. 362 to 373 of Kukatpalli village then the Government has wrongly allotted. In that case appellants and the Government are to pay compensation as directed by the trial Court. On the other hand if the lands are in Survey Nos. 210/1 of Moosapet village Respondents 1 to 10 can have no claim.

These Appeals reached hearing on 18th November, 1993. After briefly noting facts this Court observed as follows:

"All the appeals were decided by the High Court by a common order. However, it may be stated that the claim by the Government was that it owned extensive area in village

Moosapet: one of such Survey Nos. was 210/1 which had an area of nearly 400 acres, and that it was out of this that 195 acres were settled in favour of Praga Tools. Ghulam Khader on the other hand appears to have had extensive area in adjacent village Kukatpalli. The High Court observed that initial survey in Kukatpalli village was done in 1299 Fasli and revision survey took place in 1347 Fasli, whereas initial survey in Moosapet Village took place in 1328 Fasli and the revision survey was an error in preparing the survey maps for these two villages, and if the survey maps of these two villages were placed side by side there was overlapping of each other to a substantial extent. It, however, did not decide the extent of overlapping. Further, the High Court found that factually it appeared to be correct that Ghulam Khader who was the owner of Survey Nos. 747/8, 10, 11 and 12 and Survey No. 378 area 90 acres whereas the corresponding two Survey Nos. 362-373 comprised an area of 210 acres. But it again did not decide whether this increase in area from 90/95 acres to 212 acres was due to erroneous inclusion of Government land or Ghulam Khader in the intervening period became owner of more land. The High Court assumed that Survey Nos. 362-373 comprising 210 acres did in fact belong to Ghulam Khader and that the difference in the area between old survey numbers and new corresponding numbers was of little consequence."

This Court then remitted the matter back to the Trial Court for determination of the following points with the following observations :

(1) Whether the land given to Praga Tools Corporation Ltd. is out of Survey No. 210/1 in Moosapet village? Is there any overlapping in Survey No. 210/1? If so, to what extent? Is there overlapping in any portion of Survey Nos. 362-373 and 374?

(2) (a) What was the total holding of late Shri Ghulam Khader in village Moosapet and Kukatpalli villages prior to the revision survey?

(b) Whether the lands in Survey Nos. 362 to 373 correspond to the area of land in old survey numbers?

(c) How 90/95 acres of land in Kukatpalli village in name of Ghulam khader became 212 acres in new survey numbers? Was the increase as a result of inclusion of Ghulam Khader's own land from other survey numbers or from adjacent villages or it was due to erroneous inclusion of Government land?

Before recording findings on these issues the trial court shall get the land surveyed and determine if the land alienated to Praga Tools is in fact situated in Kukatpalli village or Moosapet village. It shall be open to the court to get it surveyed either by appointing a lawyer who is well versed with survey work or by appointing higher officer of the survey department, preferably the Director of Settlement and Survey, or any independent agency having expertise of survey. The survey shall be done after giving notice to all the parties concerned, preferably in their presence. No objection to survey report shall be entertained by the trial court.

The court shall permit the parties to adduce such evidence as they consider necessary subject to relevancy.

The findings shall be remitted to this Court after affording opportunity of hearing to the parties concerned on or before expiry of six months from today."

Pursuant to the above directions the trial Court appointed the Director of Survey, Settlements and Land Records and Collector, Hyderabad District as a Commissioner. The Commissioner conducted the survey and gave a Report wherein he purported to answer the questions posed by this Court. The Commissioner also gave an additional report.

The trial Court thereafter, by its Order dated 16th October, 1998, held that this Court has remitted the matter back to it for recording findings. The trial Court held and, in our view, correctly that it was the trial Court which had to give the findings and that the Commissioner's Report was merely an aid to it. The trial Court permitted the parties to adduce evidence and lead documentary evidence. After considering all material and evidence the trial Court answered the queries posed by this Court.

Briefly stated the findings of the trial Court are :

(a) that the boundary dispute between village Moosapet and village Kukatpalli had been resolved long back and that there was no subsisting boundary dispute at present

(b) that Survey No. 210/1 was deleted from Moosapet village and Survey Nos. 362 to 373 were included as land in Kukatpalli village in the name of Ghulam Khader,

(c) that the Suit lands were in Kukatpalli village and they did not form part of the Survey No. 210/1 in Moosapet village,

(d) that the land given to M/s. Praga Tools Corporation is not out of Survey No. 210/1 of Moosapet village but that they are part of Survey No. 362 to 373 in Kukatpalli village,

(e) that the increase in land holding of Ghulam Khader was because certain Pot Karab (waste land) were earlier not included in the revenue records and by counting them the acreage came to 218 acres. The Trial Court also found that Ghulam khader had inherited lands of his sister Khader Unnissa Begum and the addition of those lands further increased his holdings.

These findings of the trial Court are now assailed before us. It has been submitted that the Plaintiff's claim must be restricted to what had been claimed by them in the plaint. In the plaint the Plaintiffs claim is to lands in Survey Nos. 362 to 373 in village Kukatpalli. As has been found by the trial Court even presuming that this area is restricted to what is claimed in the Plaint, it comes to 218 acres. What has been given to Appellants is 195 acres 33 guntas. This has been given on the basis that this was Government land in Survey No. 210/1 in Village Moosapet. Once it is found that this is not a part of Survey No. 210/1 of Moosapet village, it automatically follows that the decree of the trial Court, as affirmed by the High Court, is correct and cannot be interfered with.

The State of Andhra Pradesh has filed objections to the

findings of the trial Court. On behalf of Appellants and the State of Andhra Pradesh it was submitted that the trial Court could not have discarded the findings of the Court Commissioner. It was submitted that as per the Orders of this Court, it was only this Court which could hear objections on the report of the Commissioner. We see no substance in this submission. This Court had directed the trial Court to record findings. The trial Court may have appointed a Commissioner to carry out survey but ultimately the findings had to be recorded by the trial Court. The report of the Commissioner could only be an aid to the trial Court in arriving at its findings. The Trial Court has allowed parties to lead oral as well as documentary evidence. The trial Court has complied with the directions of this Court.

It was next submitted that there was a boundary dispute between Kukatpalli and Moosapet villages. It was submitted that the dispute has not yet been settled. It is submitted that till this dispute is settled the claim of the Respondents 1 to 9 cannot be upheld at all. In this behalf it is necessary to set out the relevant portion of the averments in the objections raised by the State before this Court. They read as follows:

"(f) Issue No:1 raised by the Hon'ble Supreme Court is "whether the land given to Praga Tools Corporation Limited is out of Survey No.210/1 in Moosapet Village? Is there any overlapping in Sy. No.210/1? If so to what extent ? Is there overlapping in any portion of Sy. Nos.:362-373 and 374".

The answer given by the trial court is that the land given to M/s. Praga Tools Corporation Limited is not out of Sy.No.210/1 of Moosapet village and they are in the Kukatpalli village in Sy Nos.362 to 373 and that Sy.No.210/1 of Moosapet is not in existence as it was deleted and there is no overlapping in Sy.No.210/1 or any portion of Sy.Nos.362 to 373 and 374.

The answer given by the trial court to the 1st issue is not correct and satisfactory one, because there is overlapping in the above village and the matter not yet finalised by the Competent authorities and at no point of time Sy.No.210/1 Moosapet village was deleted as per Revenue records.

It is pertinent to mention that while deciding boundary dispute between Kukatpalli and Moosapet villages, the Commissioner, Survey Settlements & Land Records, Hyderabad in his order dated 28.10.1978 held that the Supplementary sethwar of 1964 showing Sy.No.210/1 shall continue to remain in Moosapet village and Col. Safdar Ali Mirza is entitled to patta rights over Sy.No.210/1 in Moosapet village.

Aggrieved by the order of Commissioner, Survey, Settlement & Land Records dated 28.10.1978, the Collector filed a revision petition under section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli in the court of Hon'ble Revenue Minister. The Government in its order dated 10.4.1992 stayed the order of Commissioner to the extent treating the Government land in Sy.No.210/1 admeasuring Ac.500-00 as patta land of Col. Safdar Ali Mirza. The Revision Petition is not finally disposed off due to pendency of (4) civil appeals in the Hon'ble Supreme

Court.

In a civil suit filed by Smt. Mahboobunnissa Begum the Addl. Chief Judge, Hyderabad in O.S. No.102/75 dt. 24.4.1982 decreed that the land handed over to Praga Tools in Sy.No.210/1 of Moosapet village is part of Sy.No.362 to 373 of Kukatpalli village which is a patta land of Smt. Mahboobunnissa Begum and awarded compensation of Rs.40 lakhs. Aggrieved by the said order, Government filed CCCA 9/83 which was partly allowed by High Court. The State of Andha Pradesh filed C.A.No.2763-64 of 1989 which is pending before the Supreme Court.

Due to different stand taken by different authorities, the Supplementary Sethwar of 1964 has not yet been implemented in Revenue records and boundary dispute and overlapping of Sy.No.210/1 of Moosapet village with S.Nos.362 to 373 of Kukatpalli village remains unsettled."

As is being pointed out hereafter, the above averments that the boundary dispute between Moosapet and Kukatpally village is still pending is contrary to Government records and to averments in Suit No 102 of 1975. It is a pity that a Senior Officer of the rank of Secretary to the Government makes false averments before a Court of law. More than anybody else Government and its officers are expected to be honest with Courts of law and not take up a patently false stand. If an officer of this rank cannot be honest with the Court then one wonders how he can be trusted to hold such a high position. This Order is to be brought to the notice of the Chief Secretary who should warn the concerned officer not to repeat such behavior and to keep the warning in the file of the officer.

That this is a false case is clear from the following:

(a) In the written statements filed in this Suit it has been averred as follows :

"1. In respect of the allegations in paragraph No. (1) of the plaint, it is submitted that the suit lands were involved in a overlapping case with certain lands of Moosapet village. In this connection, the Land Record Assistant, Hyderabad District, in file No.G1/914/63, made certain proposals regarding the overlapping of lands of Moosapet and Kukatpalli village and set the same to the Director of Survey & Settlements, through letter No.G1/914/63 dated 25.10.1963. The Director of Survey & Settlement while forwarding a copy of the decision taken in the year 1299 fasli, instructed the Land Record Assistant to implement the orders passed in the year 1299 fasli. The land Records Assistant was also directed to refix the boundaries of the Kukatpalli Village as per the Revision plan. Thereupon, Kharij Jama Patrak was prepared by the Land Record Assistant and sent to the Director of Settlement for approval and after his approval Zamima Sethwar was issued in the year 1964. Under that Sethwar certain survey numbers were deleted from Moosapet village while retaining in Kukatpalli village. But until the Zamima Sethwar of 1964 was issued the Revenue Record showed that the lands in question i.e., the suit lands were Government lands in survey No.210/1, Moosapet village. Consequent to the issue of the Zamima Sethwar of 1964, the lands in question being retained in Kukatpalli village bear the survey numbers 362

to 373 and part of Government land in S.No.374. From the Revenue Records of Kukatpalli village it is obvious that one Smt. Mahaboobunnissa Begum was owner of the said lands which were shown as Kancha lands admeasuring 212 acres 16 guntas."

Thus in this suit it is admitted position that the boundary dispute had been settled; that certain Survey Nos. were deleted from Moosapet village and retained in Kukatpalli village; that Survey Nos. 362 to 372 were allotted to Kukatpalli village and stood in the name of Mahaboobunnissa Begum.

(b) the same averments had also been made in the written statement of the Government in an earlier Suit bearing No. 332 of 1987 wherein it is averred as follows :

"15. It is submitted that there is no boundary dispute between Moosapet and Kukatpalli villages. This dispute is already settled in the year 1858 Fasli by the then Commissioner, Survey and Settlements. The said decision is final. At present there is no boundary dispute at all."

Thus at all stages Government has itself been stating that the boundary dispute is no longer pending. All that the Government was claiming was that the concerned lands were in survey No. 210/1 of Moosapet village. Now that it has been found that the lands are in Survey Nos 362 to 373 of Kukatpalli village a patently false case and the bogey of pending boundary dispute is being raised. It is indeed a pity that a high official of the Government now chooses to take an contrary and false stand. Such practice has to be deprecated in no uncertain terms.

The fact that there is no longer any boundary dispute is clear from numerous other records and documents, all of which are of the Government. All these documents are also marked as exhibits in Suit No. 102 of 1975.

On 16th of January, 1968, the Collector has written to the Secretary to the Government Revenue Department wherein, in the context of the claim made by Respondents 1 to 19, it is pointed out that a revised settlement of the Kukatpalli village was in force and that the claim of the owner to the land would have to be accepted. In this letter it was, inter alia recorded as follows :

"The Director, unearthed the old records and found that a decision regarding this boundary dispute was already taken in 1299 Fasli. While sending a copy of this decision he gave detailed instructions to the Collector LR quoting this decision with a direction to implement the same. The Land Record Assistant sought clarification about its implementation. The Director in reply stated that the decision of 1299 Fasli should be implemented by refixing the boundary of Kukatpalli village as per the revision map. Thereupon the Joint Collector and Collector ordered preparation of Kami and Jasti Patrak. The Director of Settlement approved the Kami Jasti sent by the Land Record Assistant and a Zamine Sethwar has been issued in pursuance of the same.

It is seen from the said files that the boundary dispute between Kukatpalli and Moosapet was existing when the official language was Persian and even before 1299 Fasli. Kukatpalli was a (Khalsa) Devani village and Moosapet was a Sarfekhas village. This boundary dispute in those days was decided by two agencies, one by a panch Shaikpet Ailiah by name, who was the Malipatel of Shaik village and the other Sri Masheeduddin, Assistant Director, Settlement (Khalsa) in 1299 Fasli. The Panch gave a decision which was not acceptable to the Diwani authorities. Sri Masheduddin, gave a decision which also was not acceptable to the Sarfekhas authorities. The then Superintendent, Settlement (Khalsa) Shri Vasudev Rao by name approved the decision in 1300 Fasli and got the same implemented through Shri Venkateshswami Rao on 13.2.1301 Fasli. This decision of Superintendent Settlement was communicated to the Govt. in the Revenue Department. The Revenue Secretary, Shri Bharoucha ordered that the decision should be taken at a joint meeting of Khalse and Sarekhas survey and settlement officers.

Pursuant to the above orders joint survey and inspection by Khalsa Officers and Sarfekhas officers were done and decision was arrived at accepting the decision given by Sri Masheeduddin, Assistant Director, Settlement in 1299 Fasli. The Government (Revenue Department), files bearing No. 130/86 (Misc. Revenue) of 1345 Fasli, 1/22 of 1324 Fasli, and 62/86 (Settlement) of 1349 deal with the instant case as there are references available in the files of Director of Settlement quoted already. The Director of Settlement (Khalsa) issued order No. 628 dated 11.3.1350, to correct papers as per traverse boundary of Kukatpalli and closed the file."

Also on record is another letter dated 28th May, 1970 from the Collector to the Joint Secretary to the Government Revenue Department. Here again it is emphasised that there is no boundary dispute between Kukatpalli and Moosapet village. It has been recorded that certain numbers have been deleted from Moosapet village and have been retained in Kukatpalli village.

By another letter dated 31st of July, 1973, the Collector again points out that Survey No.210/1 of Moosapet village has been deleted and that the land allotted to M/s. Praga Tools Corporation Ltd. falls within Survey No. 362 to 373 of Kukatpalli village, which is a patta land. It is suggested that proceedings for acquisition of this land be taken up as land had already been given to Praga Tools Corporation Ltd. In October 1979, the Government issued a Notification which is Gazetted on 30th October, 1979. According to this Notification certain lands which are in Kukatpalli village are now transferred to Qutubullahpur village. Among the lands which were in Kukatpalli village and which are now transferred to Qutubullahpur village are Survey Nos. 362 to 373. Thus the Government recognized the fact that Survey Nos. 362 to 373 in Kukatpalli village existed. The Hyderabad Urban Development authority has issued a letter dated 24th September, 1976 pointing out that Survey No.210/1 of Moosapet village stands deleted from their records.

There are number of other documents also on record of Suit No 102 of 1975. The trial court has noted them. For purposes of this Order the above are sufficient to conclude that the findings of the trial Court on the question raised

by this Court are absolutely correct and unassailable. One further fact must be mentioned. If, as now falsely claimed, there was a pending boundary dispute and it had not been resolved whether these lands were to be in Moosapet or Kukatpalli the Government could not have allotted to the Appellants. An allotment could only take place after such a dispute was resolved. It is thus clear that the State of Andhra Pradesh has purported to allot Appellants (M/s. Praga Tools Corporation Ltd.) lands belonging to the Respondents 1 to 9 without acquiring the same and without paying any compensation for the same. The trial Court, was, therefore, right in decreeing the Suit and directing the State as well as M/s. Praga Tools Corporation Ltd. to jointly and severally pay compensation. The High Court was right in confirming this Decree. The High Court was also right in holding that what the State had taken over and handed to Praga Tools Corporation Ltd. was only 195 acres and 33 guntas. Compensation could thus be paid only in respect of this area. The High Court has amply protected Respondents 1 to 9 by observing that they remain the owners of the remaining land. As stated above Respondents 1 to 9 have also filed Appeal No. 2762 of 1989. It is against that portion of the Judgment restricting the compensation to 195 acres and 33 guntas and reducing the rate of interest to 6 % p.a. We see no infirmity in the Order of the High Court. Appellants and Government are only liable to pay for the land wrongly taken over. As only 195 acres and 33 guntas were taken over they only have to pay for that. The interest has been rightly fixed at 6% as, at the time the land was taken over, this was prevailing rate of interest. Civil Appeal No. 2762 of 1989 also stands dismissed. In this view of the matter we see no reason to interfere in any of the Appeals. Accordingly Civil Appeal No. 2630 of 1989 filed by M/s. Praga tools Corporation Ltd.; Civil Appeals Nos. 2763/64 of 1989 filed by the Government of Andhra Pradesh and Civil Appeal No. 2762 of 1989 stand dismissed.

There shall be no order as to costs in all the Appeals.