

A GOUNI SATYA REDDI
v.
GOVERNMENT OF ANDHRA PRADESH AND ORS.

MAY 6, 2004

B [BRIJESH KUMAR AND ARUN KUMAR, JJ.]

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 :

C *Transfer of Property—Execution of sale deed by the holder of*
General Power of Attorney on behalf of owner of the property—Challenged
by another person claiming himself to be the holder of the General Power
of Attorney—Suit for injunction filed by Vendee—Another suit filed by the
D *Vendor owner claiming possession back from the Vendee—Trial Court*
granted interim injunction and rejected the suit filed by the Vendor—Suit
for declaring genuine holder of General Power of Attorney filed before
Special Court—Special Court directed the Vendee to transfer the possession
back to the Vendor holding the another person as genuine holder of
General Power of Attorney—Affirmed by High Court—On appeal, Held:
E *Person in possession of the property illegally and without lawful entitlement*
is a land-grabber—Since Vendee published a notice inviting objections
against the proposed transaction, he did not intend to obtain possession
of the property illegally by creating a false power of attorney—Signing of
F *document/power of attorney either by writing full name or short one would*
hardly raise any suspicion about the genuineness of the signature of its
executor—Non-examination of attesting/identifying witnesses of the deed/
power of attorney could not be a circumstance so strong to hold that a false
document was created—Neither there is any finding nor any circumstances/
facts available on record doubting the genuineness of the holder of the
G *General Power of Attorney in respect of the property to impute any such*
knowledge to the Vendee at the time of execution of the sale deed in his
favour—Mere fact of legally not entitled to the possession would not fulfill
the ingredients of land-grabber—Vendee could not be termed as land-
grabber—Hence, Order passed by the Courts below could not be sustained
and set aside—Possession of the property restored to the Vendee—
H *Directions issued.*

Appellant-Vendee purchased the land in dispute by means of a registered sale deed executed on behalf of its owner by the holder of the general power of attorney. When the Vendee started construction over the land, another person claiming himself to be the holder of general power of attorney on behalf of the owner-Respondent No. 3, raised objections against the construction. Vendee filed a suit for injunction which was granted by the Court. The alleged holder of the general power of attorney filed a suit for the owner claiming possession over the land. Granting the injunction, trial Court dismissed the suit. Vendor filed a suit before Special Court through the alleged general power of attorney holder for declaring himself to be the genuine holder. The Special Court decreed the suit directing the Vendee to hand over possession of the property to the Vendor. This order was upheld by the High Court. Hence the present appeal.

Allowing the appeal, the Court

HELD : 1.1. Grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally; the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement. If such elements are missing, it would not be a case of land grabbing. [491-B]

1.2. The Special did not record in its finding that the appellant had created false documents by creating false power of attorney. In the absence of any such finding it may be examined as to what extent taking over of possession by the appellant without lawful entitlement was "with a view to take possession illegally". Mere fact of not being lawfully entitled to enter into possession by itself would not lead to the inference of land grabbing unless possession is illegally taken with that view in mind. [493-A-B-C]

1.3. No finding has been recorded by the Courts below against the case of the appellant that he had purchased the land on the basis of the power of attorney on payment of certain sum as a consideration. Though the case as taken by the appellant is mentioned in the judgment yet no finding rejecting this part of the case has been recorded. [494-A-B]

A 1.4. Respondent No. 3, Vendor, has not examined himself in support of his case that he had been in Delhi, Bombay and Hardwar and not in Hyderabad at the relevant time. However, in the circumstances, it could not be categorically inferred that he was not available in Hyderabad on the relevant date. The only other
B circumstance is in regard to non-examination of attesting and identifying witnesses of the registration of the deed of general power of attorney in favour of its holder. Certainly they could be examined, omission to do so would, however, not be a circumstance strong enough to hold that
C a false document was created by the appellant in favour of the holder of general power of attorney with an intention to get the sale deed executed in his favour. Maybe that the appellant himself has been duped and he who later disappeared may have wrongly represented to the appellant to be the holder of general power of attorney of Respondent No. 3 and executed the sale deed on that basis. But it would not mean that the appellant when entered into the possession over the
D land was aware that the power of attorney actually existed or not in favour of its alleged holder and that the sale deed executed on that basis did not entitle him to take possession. [494-C-D-E]

E 1.5. Merely not being entitled to get the possession itself was not enough to hold that a person would be land-grabber unless possession was taken with an intention to enter into possession illegally. Such an intention stands dispelled by the fact that the appellant had invited objections by publishing notice in the newspapers to the intended transaction. If the appellant was responsible for creation of a false
F document of general power of attorney in favour of its holder with an intention to get the sale deed executed in his favour, he would be the last person to invite objection through publication in the newspapers. The Special Court has not recorded any finding that no such publication was made. [494-F-G-H]

G 2.1. The holder of general power of attorney may have been an imposter, or not a genuine person or a genuine power of attorney holder of Respondent No. 3, but neither there is any such finding nor facts or circumstances on the record to impute any such knowledge to the appellant at the time of execution of sale deed in his favour. The
H provisions of the Act would not cover such cases, unless coupled with

the fact of not being entitled for possession, the person enters into possession with a view to obtain illegal possession. [494-H; 495-A-B] A

2.2 The mere fact of legally not entitled to the possession would not fulfill the ingredients of definition of "land grabbing". The High Court has only repeated briefly whatever has been discussed by the Special Court without adverting to the other facts and circumstances and the question involved. The orders passed by the Special Court and the High Court are not sustainable and are set aside and the suit filed by Respondent No. 3 through his alleged general power of attorney holder in the Special Court is dismissed. Possession of the suit property be restored to the appellant. [495-C-D-E] B C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1768 of 1997.

From the Judgment and Order dated 16.7.96 of the High Court of A.P. at Hyderabad in W.P. No. 8165 of 1996. D

Amlan Kumar Ghosh for the Appellant.

G. Ramakrishna Prasad and Mr. Mohd. Wasay Khan for the Respondents. E

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. : The judgment of the High Court of Andhra Pradesh upholding the judgment and order passed by the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') directing the appellant to handover the possession of the land to respondent no. 3 herein Dr. Guru Bhagavathula Rama Krishna Rao, has been impugned. F

The relevant facts leading to the dispute between the parties are that according to the appellant he had purchased the land in dispute by means of a registered sale deed dated 5.2.1994 executed on behalf of respondent no. 3 by his General Power of Attorney holder S. Prabhakara Rao. He was granted permit by the appropriate authorities for construction over the land G H

A in the month of March, 1994 whereafter the appellant started construction and had already raised pillars etc. when an objection was raised by Tirupathiah who claimed to be the General Power of Attorney holder of the respondent no. 3. The case of Tirupathiah was that no one else including S. Prabhakara Rao had any right to transfer the property. However, B since obstruction was being created to the construction undertaken by the appellant over the land in dispute, he filed a suit for injunction on 28.3.1994. An interim injunction was granted in favour of the appellant. Later, however, Tirupathiah also filed a suit on 29.6.1994 for respondent C no. 3 claiming possession over the land. On 29.6.1994 an order to maintain status quo was passed and ultimately by judgment and order dated 20.10.1994 both suits were decided confirming the injunction granted in favour of the appellant and dismissing the suit of respondent no. 3.

In respect to the question of possession, on consideration of all the evidence adduced before the Civil Court, it recorded a finding that the D appellant was in possession and a case for grant of interim injunction was made out. However, in so far the question as to the title and ownership of the land was concerned it was observed that it was for the parties to approach the competent court for determination of their dispute since no other relief was prayed for except for an interim injunction. While E disposing of the suit O.S. No. 3226 of 1994 filed by G. Ramakrishna Rao the Trial Court found that there was no reason to grant any *status quo* order as prayed for and so far the question of title is concerned it was observed that it was open to the parties to take appropriate steps and approach the competent court to determine their dispute in respect of the title.

F After the first round of litigation, as indicated above, was over, the respondent no. 3 filed a suit being LGC No. 157 of 1994 before the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act through P. Tirupathiah, the alleged General Power of Attorney Holder. The main dispute between the parties was as to whether S. Prabhakar Rao was the G General Power of Attorney holder of respondent no. 3 or it is P. Tirupathiah as claimed by the respondent. The case of the appellant has been that since he was interested in purchasing a property, on the suggestion of his brother-in-law, he entered into a deal with S. Prabhakar Rao who held out himself to be the General Power of Attorney holder of the respondent no. 3. The H General Power of Attorney in favour of S. Prabhakar Rao was a registered

document and the sale deed executed by S. Prabhakar Rao was also duly registered. It was denied by the appellant that Tirupathiah was the General Power of Attorney holder of Respondent No. 3. A

The case of the respondent no. 3 in the petition filed before the Special Court was that he had purchased the plot in question from the co-operative housing society on 13.6.1977. He had constructed a room over the said plot and had kept a watchman in that room to protect the property but the appellant had forcibly occupied the property in dispute and had also demolished the room of the watchman standing thereon. The allegation in regard to the General Power of Attorney in favour of S. Prabhakar Rao, it has been averred as follows : “the respondent created the false documents by creating the false power of attorney in favour of Shri S. Prabhakara Rao and got registered the sale deed in favour of the respondent and subsequently obtained the permission for the construction of the house by purchasing the false registered sale deed vide document no. 641 of 1994 dated 5.2.1994”. With the above allegations it was averred that the appellant had grabbed the property. It was further averred that the respondent no. 3 was residing in U.S.A. and had given General Power of Attorney to Tirupathiah to safeguard his property. B C D

The allegations of creating false documents and General Power of Attorney have been denied in reply preferred by the appellant before the Special Court. Further the case of the appellant was that since he wanted to purchase some property in Hyderabad on the suggestion of his brother-in-law he contacted S. Prabhakara Rao who had given out himself as a holder of power of attorney of respondent no. 3 and he executed the sale deed in favour of the appellant. Before the sale deed was executed on 5.2.1994 the appellant had got it published in the newspapers on 2.9.1993 that he intended to purchase the property in question and objections if any by anyone could be indicated to him. He received no objections from anyone whereafter the sale deed was executed in his favour on payment of a consideration of Rs. 1,90,000. He obtained permission for construction from the appropriate authorities. The appellant had also informed to respondent no. 3 through counsel about the purchase of the property on 6.9.1994. It was further averred that while the construction was in progress one Shankariah who had his plot in the neighbour-hood came with anti-social elements and tried to interfere with E F G H

- A the possession and the construction which led the appellant to file a civil suit for injunction.

B There has not been any dispute on the fact that the respondent no. 3 was the owner of the property. The dispute was as to whether Prabhakara Rao was the holder of the General Power of Attorney entitled to execute the sale deed on behalf of respondent no. 3 or not or that Tirupathiah was the holder of the General Power of Attorney. The Special Court did not believe the case of the appellant that S. Prabhakara Rao was the holder of the General Power of Attorney and this issued directions for handing over possession of the property to respondent no. 3.

C Before entering into further discussion on the merits of the case it would be appropriate to peruse certain relevant provisions of the Act. Section 2(d) of the Act defines "Land Grabber" as follows :

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

E who abets the doing of any of the above mentioned acts; and also includes the successors in interest;"

F Section 2(e) defines the expression "land grabbing", which reads as under :

G "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 land to any person on rental or lease and licence basis for construction, or use and occupation,

H

of unauthorized structures; and the term “to grab land” shall be construed accordingly.” A

(emphasis supplied)

From a reading of the definitions of the phrases “land grabber” and “land grabbing” it is clear that the grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally. That is to say the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement. If such elements as indicated above are missing in our view, it would not be a case of land grabbing. B

We may now examine the judgment of the Special Court dealing with the respective cases of the parties after coming to a conclusion that there is no dispute between the parties about the ownership of the land. That is to say that it belonged to the respondent no. 3. The Special Court discussed the oral evidence produced by both parties. It found that the appellant failed to produce Prabhakara Rao, who executed the sale deed as holder of power of attorney of respondent no. 3. It has also discussed about the effort said to be made by the appellant to trace out Prabhakara Rao since according to the appellant he tried his best to contact Prabhakara Rao and also went to the address as provided to him but it was found that Prabhakara Rao was not available even at that address. Since he was untraceable he could not be produced by the appellant. The Special Court then took into consideration the fact that power of attorney said to be executed in favour of Prabhakara Rao was not filed but a registration extract of the deed of power of attorney was produced through P.W. 5 from the Sub Registrar office. The Special Court found that the name of the respondent no. 3 is “Guru Bhagavathula Ramakrishna Rao” but the extract of the registration summoned from the office of the Sub Registrar showed that the document was signed as B. Ramakrishna Rao. The word “Guru” was not there; nor the full name. Instead of the word “Bhagavathula” only the letter “B” was indicated before Ramakrishna Rao. It is also noticed that the names of identifying witnesses were mentioned on the deed but they have not been examined. As against the above the court found that respondent no. 3 examined himself (which fact seems to be incorrect) to deny execution of any general power of attorney in favour of S. Prabhakara Rao. The court also took into consideration the circumstances that on C D E F G H

A 5.1.1994 respondent no. 3 was not in Hyderabad but the appellant adduced documentary evidence to indicate that respondent no. 3 had come to India from America and was here during the relevant period. Though according to respondent no. 3 he was in Bombay, Delhi and Haridwar etc. but not in Hyderabad. The court then takes note of the letter sent by respondent no. 3 to the counsel for the appellant in reply to the letter dated 6.9.1994 saying that respondent no. 3 had not executed any power of attorney in favour of S. Prabhakara Rao. On the basis of the above facts and circumstances the Special Court recorded a finding as follows :

C “Thus from the material available on record, though the applicant is not examined, we are of the clear opinion that the original of Ex. X-1 was not executed by the applicant and consequently the title to the schedule property does not flow to the respondent under Ex. B1.

D Ultimately, the finding as recorded by the Special Court is to be found in paragraph 21 of the judgment, which reads as under :

E “Thus, in view of our above observations, we find under issue no. 1 that the applicant is the owner of the schedule property. As we have already observed, the applicant has not authorized S. Prabhakar Rao who said to have executed Ex.B1 and consequently no title to the schedule property flow under Ex. B1 to R.W. 1. and consequently it is a case where the respondent is in possession of the schedule property without “legal entitlement”. As such we find under Issue No. 2 that the respondent is a land-grabber within the meaning of Sec. 2(d) read with Sec.2(e) of the Act.”

F Thus, the findings are that respondent no. 3 is the owner of the property who had not authorized S. Prabhakara Rao to execute the sale deed. Thus no title is passed on to the appellant who is in possession of the property without legal entitlement. Therefore, the appellant is G “land grabber” within the meaning of Section 2(d) read with Sec. 2(e) of the Act.

H The first thing to be noted is that the case of the respondent no. 3 as sought to be made out in the petition as quoted in the earlier part of this judgment was that the appellant had created false documents by creating

the false power of attorney in favour of Prabhakara Rao and got the sale deed registered in his favour and that the sale deed was also false. But we don't find any such finding having been recorded by the Special Court saying that the appellant had created the false document by creating the false power of attorney. In absence of any such finding it may be examined as to what extent taking over of possession by the appellant without lawful entitlement was "*with a view to take possession illegally*". Mere fact of not being lawfully entitled to enter into possession by itself would not lead to the inference of land grabbing *unless possession is illegally taken with that view in mind*. It is a necessary ingredient of land grabbing i.e. the person taking possession must know it that he is acting illegally while taking possession.

The appellant's case is that before the sale deed was executed he had published a notice in the newspapers inviting objections against the proposed transaction on 2.9.1993. No objections had been received, it would, however, be immaterial since the material fact is that if the appellant intended to obtain possession illegally and had obtained or created a false power of attorney in favour of S. Prabhakara Rao he would have been the last person to have published any such notice. This vital and important fact, we find, has been totally missed to be taken note of, though, only a mention of it has been made in the judgment. We again find that the criticism that original power of attorney was not filed is also not justified. The appellant is not supposed to have in his possession the general power of attorney executed in favour of another person. Yet another factor which has been over-emphasised by the Special Court as well as the High Court is that instead of Guru Bhagavathula Ramakrishna Rao the extract from the Sub Registrar's register shows that the document was signed as "B. Ramakrishna Rao". While signing, it is quite often seen that instead of writing full name alphabets are used to shorten the names. In place of "Bhagavathula" if only "B" is written it will hardly give rise to any suspicion, similarly, if "Dr. Guru" is not prefixed before the signature. One could sign one's name "Dr. Guru Bhagavathula Ramakrishna Rao" as "B. Ramakrishna Rao". It would not necessarily raise any suspicion about the genuineness of the signature. Yet another criticism is about the non-production of S. Prabhakara Rao. It may be seen that evidence was produced by the appellant to indicate that he tried to trace out and find out the correct whereabouts of S. Prabhakara Rao and actually he went to those places but it was found that

- A S. Prabhakara Rao was not residing there. He may have either shifted or may have provided a wrong address. Yet another factor which deserves to be noted is that no finding has been recorded against the case of the appellant that he had purchased the land on the basis of the power of attorney on payment of a consideration of Rs. 1,90,000. The case as taken
- B by the appellant is though mentioned in the judgment yet no finding rejecting this part of the case has been recorded. Again so far the case of respondent no. 3 that he was not in Hyderabad on 5.1.1994 is concerned, admittedly, the respondent no. 3 was in India during that period including on 5.1.1994 and according to his case he has been in Delhi, Bombay and
- C Haridwar during the said period. The respondent no. 3 has not examined himself in support of his case. In the above circumstances it could not be categorically inferred that he was not in Hyderabad on the relevant date. The only other circumstance is in regard to non-examination of attesting and identifying witnesses of the registration of the deed of general power attorney in favour of S. Prabhakara Rao. Certainly they could be examined,
- D omission to do so would, however, not be a circumstance strong enough to hold that a false document was created by the appellant in favour of S. Prabhakara Rao with an intention to get the sale deed executed in his favour. May be that the appellant himself has been duped and S. Prabhakar Rao who later disappeared may have wrongly represented to the appellant
- E to be holder of General Power of Attorney of respondent no. 3 and executed the sale deed on that basis. But it would not mean that the appellant when entered into the possession over the land was aware that the power of attorney actually existed or not in favour of S. Prabhakara Rao and that the sale deed executed on that basis did not entitle him to take possession.
- F As observed earlier, merely not being entitled to get the possession itself was not enough to hold that a person would be land-grabber unless the possession was taken with an intention to enter into possession illegally. Further such an intention stands dispelled by the fact that the appellant had invited objections by publishing notice in the newspapers to the intended transaction. The Special Court except for mentioning this fact has not
- G attached due weight to it. If the appellant was responsible for creation of a false document of general power of attorney in favour of S. Prabhakar Rao with an intention to get the sale deed executed in his favour as observed earlier also, he would be the last person to invite objection through publication in the newspapers. The Special Court has not recorded
- H any finding that no such publication was made. S. Prabhakara Rao may

have been an imposter, or not a genuine person or a genuine power of attorney holder of respondent no 3, but neither there is any such finding nor facts or circumstances on the record to impute any such knowledge to the appellant at the time of execution of sale deed in his favour. The provisions of the Act would not cover such cases, unless coupled with the fact of not being entitled for possession the person enters into possession *with a view to obtain illegal possession*. Where such view of taking illegal possession is missing or lacking a person would not be covered under the definition of the phrase or expression "land grabber". The facts, to indicate such intention, though have been pleaded, as indicated earlier, but no such finding has been recorded. The mere fact of legally not entitled to the possession would not fulfil the ingredients of definition of "land grabber" and "land grabbing". The High Court, we find, has only repeated briefly whatever has been discussed by the Special Court without adverting to the other facts and circumstances and the question involved as discussed above. The orders, therefore, passed by the Special Court and the High Court are not sustainable.

In the result, the appeal is allowed and the judgment and orders passed by the High Court and the Special Court are set aside and the suit filed by Respondent No. 3 through his alleged general power of attorney holder Tirupathiah in the Special Court under the A.P. Land Grabbing (Prohibition) Act shall stand dismissed. Possession of the suit property be restored to the appellant herein forthwith.

Costs easy.

S.K.S.

Appeal allowed.