

A

N. SRINIVASA RAO

v.

SPL. COURT UNDER A.P. LAND GRABBING (PROHIBITION) ACT
AND ORS.

B

MARCH 23, 2006

[B.P. SINGH AND ALTAMAS KABIR, JJ.]

C

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950—Sections 30, 38E, 47 and 49—A.P. Land Grabbing (Prohibition) Act, 1982—Sections 2(d) and 2(e)—Transfer of Property Act, 1882—Section 13—Protected tenant purchased agricultural lands from land owner under the Tenancy Act—Purported sale of land by the protected tenant to various transferees—Legal heirs of the protected tenant tried to dispossess the lands by executing a General Power of Attorney and entering into an Agreement of Sale—Petition filed by the transferees before Special Court under the Land Grabbing Act alleging land grabbing by the legal heirs—Special Court allowed the petition by holding the legal heirs as land grabbers and that the transferees had perfected their title by adverse possession—Writ Petition before High Court by the legal heirs—High Court allowed the Writ Petitions by holding that the legal heirs are not land grabbers—High Court, however, held that the transfer of agricultural lands in favour of various transferees, who are non-agriculturists, are not valid under the provisions of the Tenancy Act—Correctness of—Held, the action of the legal heirs of the protected tenant does not constitute an act of land grabbing and hence they are not land grabbers—Transfer of agricultural lands by a protected tenant to a non-agriculturist is void under the Tenancy Act and hence the transferees cannot claim title to such lands—Special Court under the Land Grabbing Act does not have jurisdiction to decide title on the transferees by adverse possession—Provisions of the Transfer of Property Act is not applicable since the initial transfer of lands by an agriculturist to a non-agriculturist is void.

G

One KFB was the owner of agricultural lands which is governed by the Hyderabad Tenancy and Agricultural Land Act, 1950. UR, who was a protected tenant, purchased 14 acres and 6 guntas of land from KFB under a sale deed for a consideration and obtained a certificate under section 38E of the Andhra Pradesh (Telangana Area) Tenancy and

H

Agricultural Lands Act, 1950 from Revenue Divisional Officer. Prior to the execution of the sale deeds, the tenant UR was purported to have sold part of the lands to MRA, who in turn purported to have sold part of the lands to one PN and to one CR by a sale deed. The names of PN and CR were duly mutated in Town Survey Registers and in Revenue records. On the death of CR, his share in the land devolved on his legal heirs.

PN and the legal heirs of CR filed an application before the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 against the legal heirs of UR alleging that they conspired to grab the disputed lands by executing a General Power of Attorney in favour of one NSR authorising him to convert the disputed lands into plots and to sell and execute sale deeds in respect thereof in favour of purchasers. The legal heirs of UR also executed an Agreement of Sale in favour of NSR in respect of the disputed lands who sold it to others. The Special Court allowed the application and held the legal heirs of UR and NSR as land grabbers within the meaning of the Act and directed criminal proceedings under sections 4 and 5 of the Act.

The legal heirs of UR and NSR filed Writ Petitions before High Court. The High Court allowed the Writ Petitions by holding that the legal heirs of UR were not land grabbers. The High Court, however, held that the sale deeds executed by KFB in favour of UR and UR in favour of MRA are not valid under section 47 of the Tenancy Act of 1950; that in the absence of a requisite Certificate under the Tenancy Act of 1950, subsequent transfers in favour of the others including the applicants did not confer any right or title to them; and that section 43 of the Transfer of the Property Act, 1882 is not applicable since a transfer in the absence of prior permission or sanction under the Tenancy Act of 1950 was prohibited. The High Court also allowed the Writ Petition of NSR but with certain observations.

The legal heirs of UR filed Review Petitions before High Court. NSR filed an application for clarification on the ground that the observations made by the High Court *de hors* the issues involved would have the effect of affecting his interests and would stand in his way in working out his civil rights in the Civil Court with regard to his legitimate proprietary rights. The legal heirs of UR also filed an application for clarification before the High Court. PN also filed Review Petitions before the High Court. The High Court dismissed all the applications and review petitions

A filed by the parties. Hence the appeals by PN, the legal heirs of UR and NSR before this Court.

B PN, in his appeal, contended that the actions of the legal heirs of UR fall within the meaning of 'land grabbing' under section 2(e) of the A.P. Land Grabbing (Prohibition) Act, 1982 and hence the penal provisions under the Act must be imposed on them; that the disputed lands, after it came to be included within City Municipality, are urban lands eventhough the revenue records of such lands still showed as 'dry agricultural lands'; that the provisions of the Tenancy Act of 1950 are not applicable since the lands were no longer agricultural in nature; that the provisions of the C Transfer of Property Act, 1882 are applicable; and that they had perfected title over the disputed lands by adverse possession.

D The legal heirs of UR contended that UR was a protected tenant under the Tenancy Act of 1950 and hence he had a right to purchase the lands under the Tenancy Act; that UR, on purchase, applied and obtained a certificate under section 38 of the Tenancy Act and hence they cannot be said to be land grabbers under the provisions of the Land Grabbing Act of 1982; that under the provisions of the Land Grabbing Act, an act of land grabbing would necessarily have to be followed by a physical attempt to take possession of the lands which was not there; that UR could not have conveyed the lands to MRA without the prior sanction of E Tahsildar under section 47 of the Tenancy Act of 1950; that any transfer of land by an agriculturist to a non-agriculturist is barred under section 49 of the Tenancy Act of 1950; that section 43 of the Transfer of Property Act is not applicable since the transfer between UR and MRA are invalid under the provisions of the Tenancy Act of 1950; and that the plea of F adverse possession could only be decided by a civil court and not by a Special Court under the Land Grabbing Act of 1982.

G NSR, in his appeal, contended that the observations made by the High Court would have the effect of affecting his interests and would stand in his way in working out his civil rights in the Civil Court with regard to his legitimate proprietary rights.

Disposing of the appeals, the Court

H HELD: 1.1. The attempts by the heirs of UR to dispossess the transferees could at best be said to be an attempt to gain possession of the lands without actually obtaining possession thereof. This would not

constitute an act of land grabbing within the meaning of A.P. Land Grabbing (Prohibition) Act, 1982. In order to constitute an act of land grabbing, an attempt to dispossess must be followed by actual dispossession which would then constitute land grabbing so as to attract the penal provisions of the Land Grabbing Act of 1982. [303-A, B]

1.2. The initial document executed by UR in favour of MRA was void since UR did not have any saleable interest in the land at that stage having regard to the express prohibition under Sections 47 and 49 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950. This is not a voidable transaction and was capable of being avoided without the defect being cured under Section 50B of the Act. It was all the more so since the transfer was being made by a protected tenant as an agriculturist to a non-agriculturist which has also been expressly prohibited under the Act. That UR was aware that the lands were agricultural in nature is evident from the application filed before the Special Judge in which the said lands were described as "dry agricultural lands". [303-C-E]

1.3. There is nothing to show that the user of the lands had been altered with the passage of time, except for the fact that the said lands were now included within an urban area. The scheme of the Tenancy Act of 1950 is reflected in Section 30 of the Act which prohibits sub-division or subletting of any land by a tenant or assignment of any interest held by him therein. The Preamble to the Act provides that it was expedient *inter alia* to amend the law regulating the relations of landlords and tenants of agricultural lands and the alienation of such lands and to enable the land holders to prevent excessive sub-division of agricultural holdings.

[303-E-G]

1.4. In a proceeding before the Special Court, the only issue which fall for decision is whether there has been an act of land grabbing as alleged and who is the guilty party. The Special Court has no jurisdiction to decide questions relating to acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of the civil courts. The Special Judge apparently travelled beyond the jurisdiction vested in him under the Land Grabbing Act of 1982 in deciding that even if the provisions of Section 47 of the Act was a bar to transfer without the sanction of the Tahsildar, the occupants of the land had perfected their title thereto by way of adverse possession.

[303-G, H,; 304-A]

A 1.5. When the initial transfer itself between UR and MRA was invalid, the question of application of Section 43 of the Transfer of Property Act to such a transaction on account of subsequent acquisition of title by UR would not be available. [304-B]

B *Ram Pyare v. Ram Narain and Ors.*, [1985] 2 SCC 162; *Motor General Traders and Anr. v. State of Andhra Pradesh and Ors.*, [1984] 1 SCC 222; *Collector of Bombay v. Municipal Corporation of the City of Bombay and Ors.*, [1952] SCR 43; *Sarifabibi Mohmed Ibrahim (Smt.) and Ors. v. Commissioner of Income Tax, Gujarat*, [1993] Supp. 4 SCC 707; *The Jumma Masjid, Mercara v. Kodimaniandra Deviah*, [1962] Supp. 2 SCR 554; *State of A.P. v. P.V. Hanumantharao*, [2003] 10 SCC 121; *Sita Ram v. Radhabai and Ors.*, [1968] 1 SCR 805; *Ram Bhuwan Singh v. Jagbir Singh and Ors.*, [1990] 4 SCC 306; *Manchegowda and Ors. v. State of Karnataka and Ors.*, [1984] 3 SCC 301; *Kartar Singh (dead) by Lrs. and Ors. v. Harbanskaur (Smt.)*, [1994] 4 SCC 730; *Balkrishnan v. Satyaprakash and Ors.*, [2001] 2 SCC 498; *S.M. Karim v. Bibi Sakina*, AIR (1964) SC 1254 and *Sada v. Tahsildar, Uttoor, Adilabad District and Ors.*, (1987) 2 ALT 749, referred to.

Ramsden v. Dyson, (1866) LR 1 HL 129, referred to.

E 1.6. The observations made by the Writ Court appear to have been made in passing and cannot bind the parties in a properly constituted suit where the rights of the parties are to be adjudicated. It is hence clarified that in the even any civil action is taken by the NSR in furtherance of his rights, if any, under the General Power of Attorney granted in his favour and/or any other document, such observations will not be relied upon in coming to a decision in the suit. [304-C, D]

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4527-4528/1999.

G From the Final Judgment dated 21.11.1997 of the Andhra Pradesh High Court in W.P.M.P. No. 24605/97 in W.P. No. 4026/1990 and Rev. W.P.M.P. No. 22810/97 in W.P. No. 4991/90.

WITH

C.A. Nos. 4534-4535/1999, 4529-4532/1999 and Cont. Petn. (c) Nos. 89-92 of 2000 in CA Nos. 4534-35/99 and 4527-28/99.

H U.U. Lalit (N.P.), K. Parasaran, C. Pandari, K.K. Tyagi, I. Ahmad, P.

Narasimhan, Hari Sridhar, Anirudh Sharma, P.R. Tiwari and A. Subba Rao A
for the Appellant.

K.K. Venugopal, R.F. Nariman, S. Srinivas Reddy, S. Niranjan Reddy,
Jasan, Y. Raja Gopala Rao and S. Naranjan Reddy for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. Applications for substitution are allowed.

All these appeals arising out of leave granted involve common questions
of fact and law and have, therefore, been taken up for hearing and disposal
together.

One Kaneez Fatima Begum was the former owner of the lands covered
by Survey No. 65 to 74 of Yousufguda village governed by the Hyderabad
Tenancy and Agricultural Land Act, 1950. One Uppari Ramaiah was her
tenant in respect of the said lands. From the materials on record, it appears
that the said Uppari Ramaiah purchased 14 acres and 6 guntas of land from
Kaneez Fatima Begum under a sale deed dated 1st May, 1961 for a
consideration of Rs.13,000/- and obtained a certificate in respect thereof
under Section 38E of the Andhra Pradesh (Telangana Area) Tenancy and
Agricultural Lands Act, 1950 (hereinafter referred to as the "Tenancy Act of
1950") from the Revenue Divisional Officer, Hyderabad, West. Prior to
execution of the said deed, Uppari Ramaiah is purported to have sold an
extent of 20,086 square yards from out of the total area measuring 14 acres
and 6 guntas to one Mir Riyasat Ali by a sale deed dated 8th February, 1961.
Out of the said 20,086 square yards, the said Mir Riyasat Ali sold 8,866
square yards to Smt. P. Neelakanteswaramma and to one Chandra
Ramalingaiah by a sale deed dated 21st November, 1961. Their names were
duly mutated in the Town Survey Registers and in the Revenue Records. On
the death of Chandra Ramalingaiah on 7th February, 1973, his share in the
land devolved on his legal heirs, namely, his widow, Chandra Suryamba, and
his two daughters, C. Raja Kumari and P. Sandhya Kumari and son Chandra
Ramakoteswar Rao. Smt. Neelakanteswaramma and the widow of Chandra
Ramalingaiah entered into an agreement for sale with Bhagyalakshmi
Cooperative Housing Society, but in view of the Government Order R.T.
No.3591 dated 1st December, 1975 and Government Order M.S. No.189
dated 17th January, 1976, they could not execute the sale deeds in favour of
the Housing Society.

A According to P. Neelakanteswaramma and the heirs of Chandra
Ramalingaiah, since the legal heirs of Uppari Ramaiah conspired to grab the
lands which had been conveyed in their favour by Mir Riyasat Ali, they were
constrained to file a complaint in the Special Court of A.P. Land Grabbing
(Prohibition) Act, Basheerbagh, Hyderabad, being L.G.C. No.32/1989. It was
B alleged in the complaint that the heirs of Uppari Ramaiah, who were made
respondent Nos. 1 to 10 in the complaint, executed three General Powers of
Attorney in favour of one N. Srinivasa Rao, who was made the respondent
No.11. In the said Powers of Attorney, the facts regarding transfer of the
lands by Uppari Ramaiah in favour of Mir Riayasat Ali and the subsequent
transfer by Mir Riyasat Ali in favour of P. Neelakanteswaramma and the
C predecessor-in-interest of the applicant nos. 2 to 5 were suppressed and the
property in dispute was described as the property of Uppari Ramaiah who
had purchased the same from Kaneez Fatima Begum and after Uppari
Ramaiah's death, it was stated that the lands had devolved on the respondent
Nos. 1 to 10. as his legal heirs. By virtue of a General Power of Attorney,
D the said respondent Nos. 1 to 10 authorised respondent No.11 to convert the
schedule property into plots and to sell and execute sale deeds in respect
thereof in favour of purchasers. The respondent Nos. 1 to 10 also executed
an Agreement of Sale dated 26th June, 1980, in favour of respondent No.11
in respect of the said lands. On the strength of the said General Power of
Attorney and Agreement of Sale, the respondent No.11 executed 5 registered
E sale deeds covering a part of the disputed lands in favour of one Ch.
Laksminarasamma and five others, who were also impleaded as respondent
Nos. 12 to 17 in the complaint before the Special Court.

On receipt of notice of the complaint, the respondent Nos. 1 to 12
entered appearance and filed counter affidavits. Respondent Nos. 1 to 10
F filed a counter contending that late Uppari Ramaiah, the husband of respondent
no.1 and the father of respondent Nos. 2 to 10, was a "protected tenant" of
Smt. Kaneez Fatima Begum in respect of the disputed lands covered by
Survey Nos. 65 to 74 of Yousufguda village and that he had purchased the
said lands from Kaneez Fatima Begum by a registered sale deed dated 1st
G May, 1961 for a sum of Rs.13,000/-. It was further contended that the
applicants had falsely stated that they had purchased the said lands from Mir
Riyasat Ali by sale deed dated 21st November, 1961. The lands in question
were agricultural lands and were referred to as such in the revenue records
in terms of acres and guntas and the transaction entered into by Mir Riyasat
Ali with Uppari Ramaiah was effected with the intention of avoiding having
H to obtain formal permission from the Tahasildar under Section 47 of the

Tenancy Act of 1950 for transfer of the said lands. The specific case made out in the counter filed by respondent nos. 1 to 10 was that the sale deed executed by Uppari Ramaiah in favour of Mir Riyasat Ali was fraudulent as would be evident from the fact that the same had been executed even before Uppari Ramaiah acquired full title to the properties from Kaneez Fatima Begum by the sale deed dated 1st May, 1961. It was also contended that when the applicants started interfering with the possession of the respondents over the lands in question, they had filed O.S.No.926/1981 which was pending before the IVth Additional Judge, City Civil Court, Hyderabad.

Upon noticing that Uppari Ramaiah and his legal heirs had joined Mir Riyasat Ali and K. Satyanarayana in effecting sale of some of the lands in favour of Srinivasa Government Employees Co-operative Housing Society Limited by the Deed of Sale dated 6th May, 1961(Ext.B-9) and after referring to other similar transactions entered into by Mir Riyasat Ali, the learned Special Judge overruled the objection that Mir Riyasat Ali had not acquired title to the properties in question by virtue of the sale deed executed in his favour by Uppari Ramaiah on 8th February, 1961. Relying on Section 43 of the Transfer of Property Act, 1882, and the decision of this Court in the case of *Ram Pyare v. Ram Narain & Ors.*, reported in [1985] 2 SCC P.162, the learned Special Judge held that the subsequent acquisition of title by Uppari Ramaiah to the property conveyed to Mir Riyasat Ali inures to the benefit of Mir Riyasat Ali as the same feeds Uppari Ramaiah's title to the said property.

In addition to the above, the learned Special Judge found Mir Riyasat Ali to be in actual physical possession of the properties since the same was conveyed to him by Uppari Ramaiah and since the respondents had not taken any steps to evict Mir Riyasat Ali but had allowed him to continue in possession without any interruption till 1980. The learned Judge found that the applicants had acquired title to the property by adverse possession notwithstanding the mischief of Section 47 of the Tenancy Act of 1950.

The plea taken by the respondents that the application was hopelessly time-barred, was also negated by the learned Special Judge on account of his aforesaid findings.

Once the other issues had been decided in favour of the applicants, the learned Special Judge held that the burden shifted to the respondents to prove that they were not land grabbers within the meaning of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as "the A.P. Land Grabbing Act, 1982"). On the basis of the materials before him and in

A particular of the fact that Uppari Ramaiah and his sons had joined Mir
Riyasat Ali and K.Satyanarayana in the conveyance executed in favour of the
Cooperative Group Housing Society, the learned Special Judge came to the
conclusion that by their actions it must be held that the said respondents were
land grabbers. The learned Special Judge accordingly proceeded to declare
B the respondent Nos. 1 to 17 before him as land grabbers within the meaning
of the A.P. Land Grabbing Act, 1982 and directed that criminal proceedings
be commenced against them for offences punishable under Sections 4 and 5
of the said Act.

C The heirs of Uppari Ramaiah filed a writ petition before the Andhra
Pradesh High Court, being W.P.No.4991/1990, against the aforesaid judgment
and order of the learned Judge. Another writ petition, being W.P.No.4026/
1990, was filed by N. Srinivasa Rao, to whom a General Power of Attorney
had been given by the heirs of Uppari Ramaiah, and since they arose out of
a common judgment, they were heard together and disposed of by a common
order dated 11th July, 1997.

D The High Court reversed the findings of the learned Special Judge
upon holding that the sales effected by Kaneez Fatima Begum in favour of
Uppari Ramaiah on 1st May, 1961 (Ext.A-1) and the sale executed by Uppari
Ramaiah in favour of Mir Riyasat Ali on 8th February, 1961 (Ext.A-3) were
not valid as they were hit by Section 47 of the Tenancy Act of 1950. It was
E held further that in the absence of a Validation certificate, transfers if any, in
favour of the others, including the applicants before the learned Special Judge,
did not confer any right or title on them.

F The High Court also held that Section 43 of the Transfer of Property
Act would not come to the aid of the transferee, since a transfer in the
absence of prior permission or sanction of the Tahsildar under Section 47 of
the Tenancy Act of 1950 was prohibited. The High Court, accordingly,
concluded that the respondent Nos. 1 to 11 before the learned Special Judge
were not land grabbers and quashed the order and decree of the Special
Court, Hyderabad, dated 5th March, 1990, upon holding that the same was
G illegal.

H The judgment and order passed by the Division Bench of the Andhra
Pradesh High Court allowing the two writ applications is the subject matter
of Civil Appeal Nos. 4534-4535/1999 filed by N. Srinivasa Rao whose writ
petition had been allowed but with certain observations which according to

the petitioner are contrary to his interest.

A

On the other hand, Uppari Ramaiah and others filed two Review Petitions, being W.P.M.P.Nos.22810/1997 and 22811/1997 in the two Writ Petition Nos. 4991/1990 and 4026/1990, for review of the judgment dated 11th July, 1997.

B

The petitioner, in his turn, filed a clarification application, being W.P.M.P. No.24605/1997, in W.P.No.4026/1990, on the ground that certain observations had been made by the High Court in its judgment dated 11th July, 1997 *de hors* the issues involved, which would have the effect of adversely affecting his interests and would stand in his way in working out his civil rights in the Civil Court with regard to his legitimate proprietary rights. Uppari Ramaiah and others filed an application in the clarification petition for being added as parties therein since any favourable order passed therein would have the effect of adversely affecting their interests.

C

All the said applications were taken up for hearing by the High Court on 24th October, 1997 and by its order dated 21st November, 1997, the High Court dismissed all the said applications. Civil Appeal Nos. 4527-4528/1999 have been filed by the said N. Srinivasa Rao against the said order of the Hon'ble High Court dismissing his application for clarification.

D

P. Neelakanteswaramma also challenged the orders passed by the High Court in the two writ applications, in the Review Petition in W.P.No.4991/1990 and Miscellaneous Petition filed by N. Srinivasa Rao in W.P.No.4026/1990 in the four Civil Appeals, C.A.Nos. 4529-4532/1999. All the aforesaid appeals have been taken up together for hearing and are being disposed of by this common judgment.

E

F

Appearing for the appellants in Civil Appeal Nos. 4529-4532 of 1999, Mr. K. Parasaran, learned senior advocate, took us through the provisions of the Land Grabbing Act, 1982, wherein the expression "land grabbing" has been defined in Section 2 (e) of the aforesaid Act as follows:-

"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

G

H

A licences 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;"

B Mr. Parasaran contended that having regard to the manner in which the heirs of Uppari Rammaiah had at one stage acquiesced in accepting Mir Riyasat Ali's title to the lands conveyed to him by their predecessor-in-interest, their subsequent volte face in contending that Mir Riyasat Ali had no title to the said properties, which were subsequently conveyed by him to P. Neelakanteswaramma and Chandra Ramalingaiah, must be held to attract the provisions of the 1982 Act and the penal consequences thereof.

C It was then submitted that notwithstanding the fact that the lands in question had been recorded in the revenue records as agricultural lands and Uppari Ramaiah had been recorded as a "protected tenant", over the passage of time, the lands comprised in Yousufguda village came to be included within Hyderabad Municipality though the revenue records pertaining to the lands in question had not been rectified to keep up with the changing times. Viewed from such an angle, it could very well be said that the said lands did not attract the provisions of the Tenancy Act of 1950 which dealt with agricultural lands which were subject to the various restrictions imposed in the Act itself.

E In support of such contention reliance was placed on a decision of this Court in the case of *Motor General Traders And Anr. v. State of Andhra Pradesh And Ors.*, [1984] 1 SCC 222, wherein it was held that an exemption provision which was initially valid could with the passage of time become discriminatory when the nexus with the object did not continue to survive.

F Mr. Parasaran also relied on a decision of this Court in the case of *Collector of Bombay v. Municipal Corporation of the City of Bombay And Ors.*, [1952] SCR 43, wherein following the principle in *Ramsden v. Dyson*, (1866) L.R. 1 H.L. 129, the High Court of Bombay held that the Government had lost its right to assess the land in question by reason of the equities arising in the facts of the case in favour of the Corporation which had spent a considerable amount in erecting and maintaining markets on the site in question.

G H Another decision of this Court on which a good deal of reliance was

placed by Mr. Parasaran was in the case of *Sarifabibi Mohmed Ibrahim (Smt.) And Ors. v. Commissioner of Income Tax, Gujarat*, [1993] Supp. 4 SCC 707, wherein the assessee-appellants as co-owners of a piece of land sold it to a Group Housing Society. A reference under Section 256(1) of the Income Tax Act was made to the Gujarat High Court as to whether that land was agricultural land within the meaning of Section 2 (14) of the Income Tax Act for the purpose of tax on capital gains. The reference was answered by the High Court in favour of the Revenue and in appeal this Court affirmed the view taken by the High Court upon holding that whether a land is agricultural land or not is essentially a question of fact. Several tests have been evolved in the decisions of the Supreme Court and the High Courts, but all of them are more or less in the nature of guidelines. The question has to be answered in each case having regard to the facts and circumstances of the case. It was observed that an inference has to be drawn on a cumulative consideration of all the relevant facts.

It was suggested on behalf of the appellants that the provisions of Section 47 of the Tenancy Act of 1950, wherein the previous sanction of the Tahsildar was required to be taken for permanent alienation of agricultural land, would not be attracted in the instant case since the lands were no longer agricultural in nature. The corner-stone of the appellant's case is based on the perfection of title by Uppari Ramaiah by virtue of the sale deed executed in his favour by Kaneez Fatima Begum on 1st May, 1961 which in turn perfected Mir Riyasat Ali's title in respect of the lands conveyed to him by Uppari Ramaiah on 8th February, 1961. This also had the effect of legitimizing the subsequent transfers made by Mir Riyasat Ali in favour of P. Neelakanteswaramma and Chandra Ramalingaiah and also in favour of Srinivasa Cooperative Housing Society Ltd., wherein in recognition of such a right both Uppari Ramaiah and his legal heirs had joined on receipt of a certain part of the consideration amount.

In the course of his submissions, Mr. Parasaran referred to a Notification No.44 dated 6th June, 1949, by which the area in question was included in the Jubilee Hills area within the limits of the Hyderabad Municipality. It was urged that the said fact would go a long way to establish that the lands had lost their agricultural character long ago and would no longer be governed by the provisions of the Tenancy Act of 1950 but by the provisions of the Transfer of Property Act, 1882. To lend further support to his submission, Mr. Parasaran also pointed out that in 1969 Section 47 had been omitted from the 1950 Act, inasmuch as, by then the lands governed by the said Act

A had lost their agricultural character and had been converted into urban holdings. In addition to the provisions of Section 43 of the Transfer of Property Act, reference was also made to Section 13(1)(b) of the Specific Relief Act, 1968, whereunder a person with no title or imperfect title may be compelled by the purchaser or lessee to execute or procure documents to validate the title.

B Reference was made to a decision of this Court in the case of *The Jumma Masjid, Mercara v. Kodimaniandra Deviah*, [1962] Supp. 2 SCR 554, which was a case dealing with a representation made by a person having only a *spes-successionis* in the property transferred. It was held that the transferee was entitled to the benefit of Section 43 of the Transfer of Property Act, 1882, if he had taken the transfer for consideration and on the faith of the representation.

The decision already referred to hereinbefore in the case of *Ram Pyare* (supra) echo the sentiments in the aforesaid *Jumma Masjid* case.

D In applying the provisions of Section 43 of the aforesaid Act in respect of the sale deed executed by a tenure holder, an alternative argument was advanced to the effect that even if the sale deeds executed by Uppari Ramaiah in favour of Mir Riyasat Ali and Kaneez Fatima Begum in favour of Uppari Ramaiah should be held to be void on account of non-compliance with the provisions of Section 47 of the Tenancy Act of 1950, it could not be denied
E that Mir Riyasat Ali continued to be in possession of the lands as conveyed in his favour by Uppari Ramaiah from 1961 till 1982, during which period not only did Uppari Ramaiah and his legal heirs acquiesce in Mir Riyasat Ali's title to the said land, but they did not also take any steps to challenge such title or to initiate eviction proceedings against Mir Riyasat Ali under
F Section 98 of the said Act. It was submitted that, as had been found by the learned Special Judge, the mischief under Section 47 of the 1950 Act did not prevent Mir Riyasat Ali and or those claiming under him from acquiring title to the property by adverse possession, and, in fact, the respondents in these appeals lost their possession in the lands upon execution of the conveyance by Uppari Ramaiah in favour of Mir Riyasat Ali and the subsequent transferees
G from Mir Riyasat Ali were in continuous and uninterrupted possession of the land and that they had consequently perfected their title in the lands by way of adverse possession as against the respondents.

H Appearing for the heirs of Uppari Ramaiah, Mr.K.K. Venugopal, learned senior counsel, at the very outset contended that A.P. Land Grabbing (Prohibition) Act, 1982, was not attracted to the facts of the instant case,

since admittedly the transferees from Mir Riyasat Ali were in possession of the lands conveyed in their favour. Referring to the definition of the expression “land grabber” and “land grabbing” as defined in Sections 2 (d) and 2 (e) of the said Act, Mr. Venugopal submitted that an act of land grabbing would necessarily have to be followed by a physical attempt to take possession of the lands involved, which element was lacking in this case.

Referring to the Deed of Sale dated 21st November, 1961 executed by Mir Riyasat Ali in favour of Chandra Ramalingaiah and P. Neelakanteswaramma (Ext.A-5), Mr. Venugopal urged that a genuine civil dispute had been raised regarding acquisition of title by Mir Riyasat Ali and through him his transferees in view of the recitals contained in the said deed wherein Uppari Ramaiah’s protected tenancy was referred to and it was also mentioned that under the Tenancy Act of 1950 the protected tenant had a right to purchase the interest of the land holder, which in fact, was the case when Uppari Ramaiah obtained the sale deed in his favour from Kaneez Fatima Begum on 1st May, 1961 and the same was registered on 4th May, 1961 before the Sub-Registrar, *Khairatabad*, Hyderabad. Pursuant thereto, Uppari Ramaiah had applied for a certificate under Section 38 of the aforesaid Act and the same was issued in his favour by the Revenue Divisional Officer, Hyderabad (West), Hyderabad District, on 19th May, 1961. According to Mr. Venugopal, the learned Special Judge had on a wrong interpretation of the provisions of the Tenancy Act of 1950 held the heirs of Uppari Ramaiah to be land grabbers within the meaning of the aforesaid Act.

It was also submitted that the purported sale deed executed by Uppari Ramaiah in favour of Mir Riyasat Ali on 8th February, 1961 was contrary to the concept of “protected tenancy” envisaged under the Tenancy Act of 1950 Act. In the event the recitals in the deed executed by Mir Riyasat Ali on 21st November, 1961, in favour of Chandra Ramalingaiah and P. Neelakanteswaramma are to be accepted, then, Uppari Ramaiah had only a protected tenancy in the lands in question which he could not have conveyed to Mir Riyasat Ali on 8th February, 1961, without the prior sanction of the Tahsildar under Section 47 of the Tenancy Act of 1950 which otherwise bars transfers in favour of non-agriculturists under Section 49 of the aforesaid Act.

Mr. Venugopal submitted that since the A.P. Land Grabbing Act, 1982 provides for penal consequences, including imprisonment under Sections 4 and 5 of the said Act, and against which no appeal has been provided, the

A High Court was entitled to question the decision-making process of the Special Court in exercise of its powers under Articles 226 and 227 of the Constitution of India. It was submitted that the said view had also been expressed by this Court in *State of A.P. v. P.V. Hanumantharao*, [2003] 10 SCC 121.

Mr. Venugopal submitted that Ext.B-9, being the sale deed executed by Mir Riyasat Ali and Uppari Ramaiah and his heirs in favour of Srinivasa Government Employees Cooperative Housing Society Limited could not be relied upon on account of the fact that of the consideration amount of Rs.85,854/-, only a sum of Rs.1,500/- was paid to Uppari Ramaiah and his heirs, which clearly established the sham nature of the transaction. In addition it was contended that Section 43 of the Transfer of Property Act would also not have any application in the facts of the instant case since it would first have to be established as to who had committed fraud since both, Mir Riyasat Ali, Uppari Ramaiah and his heirs were *in pari delicto* and the original contract between Uppari Ramaiah and Mir Riyasat Ali was void.

Mr. Venugopal submitted that the doctrine of *in pari delicto* which had been explained by this Court in *Sita Ram v. Radhabai And Ors.*, [1968] 1 SCR 805, being an equitable principle, one whose title to a property was based on fraud could not claim that another had obtained the said property by fraudulent means. Mr. Venugopal submitted that the principle embodied in Section 43 of the Transfer of Property Act regarding feeding the estoppel had been held to be inoperative and invalid in *Ram Bhawan Singh v. Jagbir Singh And Ors.*, [1990] 4 SCC 309 when the transfer itself was invalid.

A further submission was made that in the case of *Manchegowda And Ors. v. State of Karnataka And Ors.*, [1984] 3 SCC 301, this Court while considering certain prohibited transfers under statute had held that the same were void as the transferees acquired only a defeasible title to the lands transferred. Mr. Venugopal denied the claim made that Mir Riyasat Ali had perfected his imperfect title by operation of Section 43 of the Transfer of Property Act, 1882 when Kaneez Fatima Begum executed the sale deed in favour of Uppari Ramaiah on 1st May, 1961. It was reiterated that since the sale deed executed by Uppari Ramaiah in favour of Mir Riyasat Ali was not based on any misrepresentation, the provisions of Section 43, which feeds its estoppel, would not be available to the transaction, notwithstanding the fact that Uppari Ramaiah subsequently acquired full rights over the land in question. It was urged that the prohibition contained in Section 47 of the Tenancy Act of 1950 could not be circumvented and/or defeated in the fraudulent manner

in which it had been done. Mr. Venugopal, submitted that the said principle had been considered by this Court in the case of *Kartar Singh (dead) by Lrs. And Ors. v. Harbanskaur (Smt.)* [1994] 4 SCC 730, wherein it was held that the rule of estoppel by deed by transferor would apply only when the transferee is misled. Where the transferee knows for a fact that the transferor does not possess the title which he represents, then he cannot be said to have acted on such representation in taking a transfer. Section 43 then would have no application and the transfer would fall under Section 6(1) of the Transfer of Property Act, 1882. A B

According to Mr. Venugopal it was well within the knowledge of the parties that Uppari Ramaiah was only a protected tenant under Kaneez Fatima Begum. The sale deed executed by Uppari Ramaiah in favour of Mir Riyasat Ali as such protected tenant was hit by the provisions not only of Section 47 but also by Section 49 of the Tenancy Act of 1950. C

Apart from the above, there is also no pleading on behalf of the appellants on the application of Section 43 of the Transfer of Property Act, 1882. D

Mr. Venugopal also opposed the alternative submission made by Mr. Parasaran that P. Neelakantenswaramma and the heirs of Chandra Ramalingaiah had acquired title to the property in question by adverse possession on the principle that the question of adverse possession could only be decided by a civil court and not by a Special Court constituted under the A.P. Land Grabbing (Prohibition) Act, 1982. E

Mr. R.F. Nariman, learned senior advocate, who appeared for some of the respondents, adopted the submissions of Mr. Venugopal and contended that that since the Limitation Act would not apply to the Special Tribunal, the plea of adverse possession was not available in the proceedings before the Special Court. In any event, relying on a decision of this Court in *Balkrishan v. Satyaprakash And Ors.*, [2001] 2 SCC 498, Mr. Nariman submitted that as had been held therein the adverse possession must be adequate in continuity, in publicity and in extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. (See *S.M. Karim v. Bibi Sakina*, AIR (1964) SC 1254). F G

In addition, Mr. Nariman submitted that the Full Bench of the Andhra Pradesh High Court had in the case of *Sada v. Tahsildar, Utnoor, Adilabad* H

- A *District and Ors.*, reported in (1987) 2 ALT 749, held that a plea of adverse possession could not be taken by a land holder against a protected tenant, in this case Uppari Ramaiah, to whom a certificate had been issued under Section 38E of the Tenancy Act of 1950. Reiterating Mr. Venugopal's submission, Mr. Nariman concluded on the note that mere attempt to grab cannot be equated with an act of land grabbing and hence the provisions of A.P. Land Grabbing (Prohibition) Act, 1982 would have no application to the facts of this case.

- C Appearing for the appellant in CA Nos. 4534-4535/99 and 4527-4528/99 Mr. C. Pandari, learned advocate, adopted the submissions made by Mr. Venugopal and Mr. Nariman and submitted in addition that while adjudicating on the complaint by P. Neelakanteswarama and the heirs of Chandra Ramalingaiah, the learned Special Judge had exceeded his jurisdiction in making observations on the rights said to have been assigned in favour of respondent Nos. 7 to 16 which allegedly obstructed the appellant's right to work out his civil rights in respect of the property. It was urged that the learned Special Judge was only required to adjudicate on the question as to whether the opposite parties had acted in a manner in respect of the lands in question which would attract the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982.

- E In his brief reply Mr. Parasaran contended that not all acts done contrary to any statutory provision are always void but in some cases voidable and if a voidable act is not avoided within a reasonable time, parties are subsequently precluded from challenging the same.

- F He also attempted to show that fraud had not been pleaded by the appellant which would take out the matter from the ambit of Section 43 of the Transfer of Property Act, 1882. Referring once again to *Kartar Singh's* case (supra), Mr. Parasaran tried to convince us that in the said decision nothing different to what had been held in the *Jumma Masjid's* case (supra) had been indicated.

- G Although, the facts involved in these appeals necessitated lengthy submissions, the scope and ambit thereof is limited.

- H The main issue which surfaces in these appeals is whether the actions arising out of the dispute raised by the heirs of Uppari Ramaiah can be said to attract the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982. Admittedly, the transferees from Mir Riyasat Ali and Chandra Ramalingaiah

as also P. Neelakanteswaramma have been in possession of the properties in dispute and at no point of time had their possession been disturbed. The attempts by the heirs of Uppari Ramaiah to dispossess the said transferees could at best be said to be an attempt to gain possession of the lands without actually obtaining possession thereof, which would not constitute an act of land grabbing within the meaning of the A.P. Land Grabbing (Prohibition) Act, 1982. We agree with both Mr. Venugopal and Mr. Nariman that in order to constitute an act of land grabbing, an attempt to dispossess must be followed by actual dispossession which would then constitute land grabbing so as to attract the penal provisions of the 1982 Act.

These appeals should fail on the said ground alone but it has also been argued, and, in our view, quite rightly so, that the initial document executed by Uppari Ramaiah in favour of Mir Riyasat Ali on 8th February, 1961, was void since Uppari Ramaiah did not have any saleable interest in the land at that stage having regard to the express prohibition under Sections 47 and 49 of the Tenancy Act of 1950. We are unable to agree with Mr. Parasaran that this was merely a voidable transaction and was capable of being avoided without the defect being cured under Section 50B of the said Act. It was all the more so since the transfer was being made by a protected tenant as an agriculturist to a non-agriculturist which has also been expressly prohibited under the Act. That Uppari Ramaiah was aware that the lands were agricultural in nature is evident from the application filed before the learned Special Judge in which the said lands were described as "dry agricultural lands". Except for the fact that the said lands were now included within an urban area there is nothing to show that the user of the same had been altered with the passage of time. The decision in *Sarifabibi's* case (supra) cited by Mr. Parasaran does not, therefore, help his clients' case. The scheme of the Tenancy Act of 1950 is reflected in Section 30 of the Act which prohibits sub-division or subletting of any land by a tenant or assignment of any interest held by him therein. The Preamble to the Act provides that it was expedient *inter alia* to amend the law regulating the relations of landlords and tenants of agricultural lands and the alienation of such lands and to enable the land holders to prevent excessive sub-division of agricultural holdings. In our view, in a proceeding before the Special Court the only issue which falls for decision is whether there has been an act of land grabbing as alleged and who is the guilty party. The Special Court has no jurisdiction to decide questions relating to acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of the civil courts. The

A learned Special Judge apparently traveled beyond the jurisdiction vested in him under the 1982 Act in deciding that even if the provisions of Section 47 of the Act was a bar to transfer without the sanction of the Tahsildar, the occupants of the land had perfected their title thereto by way of adverse possession.

B Even on the question of the applicability of Section 43 of the Transfer of Property Act, we agree with the view taken by the High Court that when the initial transfer itself between Uppari Ramaiah and Mir Riyasat Ali was invalid, the question of application of Section 43 of the Transfer of Property Act to such a transaction on account of subsequent acquisition of title by C Uppari Ramaiah would not be available.

As far as the appeals filed by N. Srinivasa Rao are concerned, his only grievance is with regard to the observations made by the Writ Court while disposing of the writ applications in his favour. Such observations appear to have been made in passing and cannot bind the parties in a properly constituted D suit where the rights of the parties are to be adjudicated. We, therefore, clarify that in the event any civil action is taken by the said N. Srinivasa Rao in furtherance of his rights, if any, under the General Power of Attorney granted in his favour and/or any other document, such observations will not be relied upon in coming to a decision in the suit.

E We do not think that the orders passed by the High Court call for any interference in these appeals which are disposed of accordingly. There will be no order as to costs.

F In our view, nothing further remains to be considered in the contempt applications and they stand disposed of accordingly.

B.S.

Appeal disposed of.