THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT PETITION No.21308 OF 1998
And
WP MP Nos.14693 of 2002, 18161 of 2007 & 19656 of 2007

JUDGMENT: **(Per Hon'ble Sri Justice B. Prakash Rao)**

This writ petition has been filed by the petitioners challenging the judgment of the Special Court under A.P. Land Grabbing (Prohibition) Act (for short 'the Act') in L.G.A.No.59 of 1997, dated 30.4.1998, whereby the Special Court allowed the appeal filed by the 1st respondent and set aside the judgment of the Court of District Judge-Chairman under the Act, Krishna District, Machilipatnam in L.G.O.P.No.78 of 1992, dated 10.6.1997, dismissing the L.G.O.P filed by the 1st respondent-Temple herein for possession of the plaint scheduled property and for recovery of profits from the defendants, and declaring them as land grabbers.

The brief facts giving rise to these proceeding are that initially, the respondent had filed the suit against the petitioners in O.S.No.312 of 1981 on the file of the Sub Court, Vijayawada seeking for possession of the suit schedule property after evicting them therefrom and for recovery of mesne profits. In the plaint as has been filed and

framed the case of the respondent No.1, the plaintiff was that the suit schedule property in Survey No.168/1 & 2 was owned by the said plaintiff, which is a private trust and it was leased out to one Tummala Krishnarao and Angirekula Venkateswararao along with the other lands in the year 1962 and the proceedings initiated against them for eviction and non-payment of rents was ordered. However, the said Krishnarrao started inducting some other persons including the petitioners herein with a view to deprive the said property of the trust and therefore in regard to the extent of land, which is in their occupation, the petitioners are liable to be evicted and also for profits. The case has undergone several checkered events. The original suit was filed against 16 defendants but later the other defendants have been added who were also included as the legal hairs of certain defendants.

In the written statement filed by the defendants especially, the first defendant, which was virtually adopted by the other defendants as well, the main objection raised was to the effect that they are in actual possession of the land since the time immemorial and enjoying the same without any obstruction and they are not the tenants nor paying any rents to the said plaintiff or Tummala Krishnarao and further the

said Krishnarao has no right or locus standi to file the suit on behalf of the trust.

The petitioners/defendants have constructed pucca buildings in the suit schedule property and they are living there. They never recognized the title of the plaintiff to the suit schedule property. Further, in view of the exclusive possession of the property in their own right for more than thirty years, they have also perfected the title by adverse possession. Neither T.Krishna Rao nor Angirekula Venkateswararao were in possession of the suit schedule property at any point of time and the alleged proceedings between themselves and the plaintiff are collusive and fraudulent. Further, the allegation made by the plaintiff that the said Krishanarao inducted them in the year 1972 is false.

Later, the suit O.S.No.312 of 1981 was transferred from the Civil Court to Special Tribunal having regard to the provisions of the Act. Thereupon, the Special Tribunal framed the point for consideration as to whether the plaint schedule properties are owned by the plaint and whether the defendant are liable for eviction.

On behalf of both the parties oral and documentary evidence was adduced. The plaintiff got himself examined as P.W.1 and

marked Exs.A1 to A37. On behalf of the respondents R.Ws.1 to 6 were examined and Exs.B1 to B12 were marked.

On an appraisal of the evidence and material available on record, the Special Tribunal dismissed the case of the respondent-plaintiff principally holding that nothing has been filed to show that the trust has authorization to act as trustee and further the defendants cannot be declared as land grabbers since they have been residing in the land for more than 30 years and they were all allowed and Sri Sarabhaiah to construct the huts, which amounts to permissive possession.

On appeal, the appellate Authority, constituted under the provisions of the aforesaid Act, which is a Special Court, has once again

reappreciated the entire evidence and the material on record and by taking note of the point as farmed before the Special Tribunal and the evidence which has been recorded framed the following points for consideration viz;

(1) Whether the Trustee Bothapudi Koteswararao is entitled to maintain the application on behalf of the petitioner-trust and

(2) Whether the respondents are land grabbers within the meaning of Act XII of 1982.

Having regard to the evidence and material available on record, especially in view of the earlier proceedings and also in view of the fact that the proceedings on behalf of the trust were being pursued only by Sri Koteswararao as Managing Trustee, it was held that the present proceedings are perfectly maintainable.

Coming to the second aspect, it was held that there is absolutely no evidence in support of the plea of the adverse possession and on the other hand, the documents particularly Ex.B1 and other evidence show the permissive possession, which is fatal to the very plea of adverse possession and therefore, the petitioners are the land grabbers within the meaning of Act XII of 1982 and accordingly set aside the judgment of the Special Tribunal and the petitioners were directed to vacate the petition schedule property within a period of three months.

As against the above orders, the present writ petition has been filed on 29.7.1988 mainly contending that they have been in possession of the suit schedule property all along for more than 40 years and, therefore, they can never be called as the land grabbers to invoke the provisions of the Act. During the pendency of the writ petition W.P.MP.No.30395 of 2006 has been filed by Sarvasri B.Malli

Karjuna Rao, B.Veera Sarabhaiah and B.Koteswararao sons of Sri D.Koteswarrao who filed the suit, claiming to be the new trustees of the Devastanam Temple, to implead them as respondents 4 to 6 to the writ petition. The same was allowed by this Court on 20.12.2006. The first respondent herein also filed W.P.No.14693 of 2002 to implead the advocate receiver appointed in the proceeding as 4th respondent in the writ petition.

Later the main writ petitioners have filed WP MP No.1861 of 2006 under Order 6 Rule 27 read with 151 CPC with a prayer to receive additional affidavit dated 2.7.2007 on the file of the record in the main writ petition and to consider the points, which have been raised therein. The said application has been contested by the 1st respondent herein by filing WP MP NO.19656 of 2007 seeking permission to file additional material papers, opposing the pleas on the ground that the pleas now taken in the additional affidavit filed by the petitioners have not been raised either in the suit or in the appeal before the Tribunal/Special Court and therefore, the same cannot be permitted to be raised in the writ petition filed under Article 226 of the Constitution of India.

In the affidavit filed by the writ petitioners in support of

W.P.MP.No.18161 of 2001, which was sought to be raised as a part of main writ petition. The following principal contentions are sought to be advanced:-

> "*(i) Firstly*, the respondent Devastanam did not make any allegation to the effect that the respondent is in possession and occupation of the land in question and the petitioners grabbed the same forcibly. Further, the respondent did not seek any declaration to the effect that the petitioners herein are land grabbers. As such, the allegations set out in the application are not in accordance with the ingredients of Section 2 (b) and (e) of A.P.Act 12/82. Hence, the application of the respondents itself has to be rejected on the preliminary ground that the application itself is not maintainable.
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> The aforesaid aspect was considered by the Full Bench of this Hon'ble Court in a judgment reported in 2005 (2) ALD 675 – Mohd. Siddique Ali Khan Vs Shasu Finance Limited, Paras 106, 109, 112 and 113.
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> *(ii) Secondly*, it is submitted the allegation set out in the application (plaint) is that the tenant of the respondent i.e., T.Krishna Rao had inducted the petitioners as tenants in the suit land. The relevant averment in para-5 is "**Tummala Krishna Rao began inducting the defendants as tenants into the land from time to time**". Thus, the nature of allegation is in the nature of relationship of the landlord, tenancy in respect of lease. Therefore, the application of the respondent is outside the scope of the AP Act 12/82.
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> This aspect has been considered by the Division Bench, reported in *2000 (1) ALD 575 – Pithana Nanda Kumar Vs. Kostu Eswara Rao*.
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> (iii) Without prejudice to the above two grounds,
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> *Thirdly*, it is submitted that the admitted facts of the case on the record by the respondent are that one Sarabhaiah (original owner) has executed a gift deed (Ex.A1) transferring the land to an extent of Ac.2.33 gts (out of Ac.3.33 gts) situated in sy.no.168/1, enkipadu (v), Vijayawada, in favour of Devasthanam, out of the total extent of Ac.3.33 gts. Thus, the

land in question is not part and parcel of the gift deed.

(iv) fourthly, the plaintiff admits in the application that the suit properties are leased out to third party who in turn inducted the petitioners herein as sub-tenants. Therefore, the matter is governed by the contact or covered under AP (AA) Tenancy Act.

(v) fifthly, the respondent-1 Devasthanam is a religious endowment under A.P Charitable and Hindu Religious Institutions and Endowments Act 1987 (Act 30/87). Therefore, the competent person has to file an application before the authorities under the Act 30/1987 and not under AP Act 12/82."

We have heard the learned counsel for both the parties. Learned counsel have also taken us through the entire evidence and the material on record. Admittedly, the above pleas are sought to be raised by the petitioners for the first time that too in a petition filed under Article 226 of the Constitution of India.

Now the point for consideration in this writ petition is whether the petitioners can be permitted to raise the additional pleas in the Writ Petition filed under Article 226 of the Constitution of India.

Admittedly, on the facts and circumstances, the proceedings are initiated by filing a regular suit seeking for eviction and for mesne properties by respondent No.1 which is a trust as against the petitioners claiming that they are the land grabbers and they have been inducted by one T.Krishna Rao and another as tenants and therefore they are liable to be evicted. Therefore, in the common

parlance, it was a suit simplicitor by the plaintiff claiming to be the owner as against the third parties, who are said to be the encroachers and have been inducted by the erstwhile tenant who himself has lost the earlier round of litigation as against the said owner/Trust. The case of the respondent No.1 as set out in the plaint was denied by the writ petitioners/defendants and claming themselves to be in absolute possession of the suit schedule property and enjoying the same in their own right and also perfecting the title by adverse possession. They have denied the allegation that they were inducted through the erstwhile tenants by narrating curious aspects which can be noticed from the written statement filed initially in the suit. Except such denials in toto, no specific plea has been raised by the writ petitioners claiming title to the property on their own or independently or any such source from which they have derived title and interest in the property. Further, no such claim or title or interest in the property was ever raised in any part of the pleadings by the petitioners herein in the written statement. At that stage, the suit was transferred to the Special Tribunal and it was taken up as a case under the provisions of the Act and the same has been disposed of.

Interestingly, while the proceedings are pending before the

Special Court either side has not sought for amendment to the suit or to the written statement in any manner in furtherance of or in addition to or substantiating the pleadings as available or as were on record in the Civil Court. In view of the rival contentions of the parties, it is virtually a civil suit, which was transferred to the Special Tribunal under the provisions of the Act, and the same was disposed of. Therefore, necessarily, it follows that the case was filed as a civil suit and was continued in the same fashion and allowed to be disposed of in the same manner as it was originally laid and contested. Admittedly, the present proceedings are not by way of any application filed under Section 8 of the Act by the respondent No.1 and therefore, it cannot be said that these proceedings are initiated in the manner or in the format as contemplated under the provisions of the Act. Since it being a transferred suit, necessarily it has to be disposed of in the same manner and cannot be treated or proceeded with as an application filed under Section 8 of the Act. Therefore, the main submission as sought to be made on behalf of the petitioners that there is total non-compliance of any requirements under the provisions of the Act to call the petitioners as land grabbers cannot be accepted. Further as already stated above, these pleas, which are sought to be raised by

way of an additional affidavit, were never placed in the Courts below by both the sides. Even after the transfer of the suit to the Special Tribunal, the petitioners did not chose to raise the said pleas. Therefore, the attempt made by the writ petitioners by way of this present application i.e., WP MP.No.18161 of 2007 virtually is an attempt being made for the first time in this Court in a writ petition field under Article 226 of the Constitution of India.

In **M/s. B. S. N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. & Ors**[1]., the Supreme Court held that a plea which was not raised earlier cannot be permitted to be raised for the first time in proceedings under Article 226 of the Constitution of India. Since these proceedings are not original proceedings but are only proceedings initiated under Article 226 of the Constitution of India, challenging the order passed by the Tribunal constituted under the Act, which totally depend on the respective pleadings based on the material and conclusions which have been arrived at, no such plea can be permitted to be raised in the writ petition.

Writ petition is not the continuation of the proceedings of the Special Court under the provisions of the Act. The proceedings under the Act concluded by the order of the Special Court in Appeal. The

writ petitioner, though challenged the order of the Special Court, it is independent of the proceedings before the Special Court and the Special Tribunal. Admittedly, the parties have not raised the pleas, which they sought to raise in the writ petition, either in the Special Tribunal or Special Court. An attempt was made on behalf of the petitioners, placing reliance on the decision reported in the **State of Rajasthan, Appellant v. Rao Raja Kalyan Singh (dead) by his legal representatives, respondents**[2] to the affect that the plea of non-maintainability can be accepted at any stage. But, as already held, such a plea as now sought to be raised, with proper pleadings or necessary material to arrive at a finding either way, was not raised before the Special Tribunal or the Special Court. Before arriving at a conclusion on the issue, necessarily a proper appreciation of the pleadings and the material placed on record is essential. In the absence of any proper pleadings raised and material placed on record before the Special Tribunal or Special Court, to substantiate such a plea, there was no occasion for the Special Tribunal or Special Court to consider the same and such a plea which was not raised before the Special Tribunal or Special Court cannot be permitted to be raised in a petition filed under Article 226 of the Constitution of India.

In **Mohammad Mustafa, Appellant v. Sri Abu Bakr and others, Respondents**[3], it was held that a finding recorded without proper pleadings and necessary issues having been framed cannot be binding on any of the parties. Hence, there being no proper foundation having been placed for the said plea, it is not open for the petitioners to come out with such a far reaching plea for the first time in this writ petition. Such a plea was not taken by the petitioner either before the Tribunal or the Special Court or at the time of filing of the writ petition itself. Only through the present miscellaneous petition, the plea of non-maintainability was raised.

The entire attempt on the part of the petitioners in seeking the plea is that they do not fall within the parameters of the land grabbers as defined under the provisions of the Act and as laid down by this Court in **Pithana Nanda Kumar and others *v.* Kostu Eswara Rao and others**[4]**.** Such a plea cannot be acted upon at this belated stage nor can be permitted to be raised for the first time. That apart, it has to be seen that this plea would run quite contrary in the teeth of the specific plea, which has been raised by the petitioners themselves in the written statement and the same having been pursued and canvassed at both the levels i.e. before the Special Tribunal and

Special Court. Therefore, absolutely there is no justification to accept such a plea in the writ proceedings, which is contrary to the plea taken in the written statement. In the circumstances, we hold that the present attempt on the part of the petitioners in seeking leave of this Court to raise such a plea, is wholly misconceived and unsustainable. Except seeking the leave of the Court to raise such a plea, no attempt has been made on the part of the petitioners to canvas on the merits and or having regard to the findings as arrived at by the appellate authority, i.e., Special Court, wherein it has been specifically found that the respondent No.1, which is the Trust of the Temple is the owner and the proceedings have been competently initiated, that the petitioners having raised a plea of adverse possession and having failed to establish the same, they are not entitled to any right or interest to remain in possession of the schedule property and are liable to be evicted and thus they are the land grabbers. Therefore, we are not inclined to go into any of these questions especially in view of the failure on the part of the petitioners to attack the same on valid grounds. Even otherwise, having regard to the fact, that the same being findings of fact, having been arrived at on an appreciation of the entire material on record, this Court, in exercise of the writ jurisdiction,

cannot go into the same. The learned counsel for the petitioners have not been able to point out any perversity in the findings arrived at by the appellate authority.

The findings recorded by the appellate Court are perfectly justified, as they are based on proper appreciation of the evidence and material on record. Therefore, we do not find any error in the order justifying interference by this Court. In view of the same, the W.P.MP.Nos.14693 of 2002, 1861 of 2007 and 19656 of 2007 are liable to be dismissed and they are accordingly dismissed.

For the reasons aforesaid, we are not inclined to grant leave to the petitioners to raise the additional pleas at this belated stage. Accordingly, the WPMPs are dismissed. Consequently, the Writ petition is also dismissed since there are no special grounds to go into the merits.

No costs.

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(B. PRAKASH RAO, J)

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(D. APPA RAO, J)

10th December 2007.
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[1] 2006 AIR SCW 5834

[2] AIR 1971 SUPRME COURT 2018

[3] AIR 1971 SUPREME COURT 361

[4] 2000 (1) ALD 575 (DB)