GOVERNMENT OF ANDHRA PRADESH

v.

THUMMALA KRISHNA RAO & ANR.

March 16, 1982

[Y.V. CHANDRACHUD, C.J., A. VARADARAJAN AND AMARENDRA NATH SEN, JJ.]

Andhra Pradesh Land Encroachment Act, 1905—S. 6—Provision for summary eviction of unauthorised occupant of government land—Existence of bona fide dispute regarding title between government and occupant—Resort to summary remedy—Whether valid and legal?

The Andhra Pradesh Land Encroachment Act, 1905 was enacted to check unauthorised occupation of government lands. Under s. 2 of the Act all public roads, streets, lands, paths, bridges etc., are deemed to be government property. Any person who is in unauthorised occupation of any land which is the property of the government is liable to pay assessment as provided in s. 3 of the Act. Section 5 provides that any person, liable to assessment shall also be liable to pay an additional sum by way of penalty. Under s. 6(1) the Collector, Tahsildar or Deputy Tahsildar has the power to summarily evict any person unauthorisedly occupying any land for which he is liable to pay assessment under s. 3, after issuing a show cause notice as provided in s. 7.

Some time between the years 1932 and 1937 certain lands were acquired by the Government of Nizam of Hyderabad for the benefit of a University. A question having arisen as to whether three specific plots of land had been included in the acquisition, the University filed a suit in 1956 praying for the eviction of the occupant. This suit was dismissed in 1959 on the ground that one of the plots had not been acquired by the Government and in respect of the other two plots the University had failed to prove its possession within 12 years before the filing of the suit. The trial court found that the heir of the original owner of the plots had encroached on the said two plots in 1942. The judgment of the trial court was confirmed by the High Court in 1964. The State Government was not a party to those proceedings.

The University activated the State Government for summary eviction of the heir of the original owner from the three plots of lands. The Tahsildar initiated action and passed an order of eviction under s. 6(1) of the Act on December 15, 1964. Appeals against the order were rejected by the Collector in 1965 and by the Revenue Board in 1968. The respondents who purchased the plots during the pendency of the appeal before the Revenue Board were impleaded as parties

to the proceedings on the death of the heir of the original owner and their appeal from the decision of the Revenue Board was rejected by the Government in 1973.

The respondents challenged the order of eviction by a petition under Art. 226 which was dismissed by a Single Judge of the High Court who held that the question of title to the property could not properly be decided by him under Article 226 but the fact that there was a finding by the Civil Court that there was encroachment by the alleged encroacher was sufficient to entitle the Government to initiate action under the provisions of the Land Encroachment Act.

The appeal of the respondents was allowed by the Division Bench which held that a dispute relating to as far back as 1942 could not be dealt with in summary proceedings under the provisions of the Land Encroachment Act. The summary remedy could not be resorted to unless there was an attempted encroachment or encroachment of a very recent origin; nor could it be availed of in cases where complicated questions of title arose for decision.

Dismissing the appeals,

HELD : (1) The summary remedy for eviction provided by s. 6 of the Act can be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of the Government. If there is a *bona fide* dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it and on that basis take recourse to the summary remedy provided by s 6. In the instant case there was unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land had been the subject-matter of acquisition proceedings taken by the then Government of Hyderabad, and whether the University for whose benefit the plots were alleged to have been acquired had lost title to the property by operation of the law of limitation. The respondents had a *bona fide* claim to litigate and they could not be evicted save by the due process of law. The summary remedy prescribed by s. 6 was not the kind of legal process which was suited to adjudication of complicated questions of title. That procedure was, therefore, not the due process of law for evicting the respondents. [506 H; 507 A; 507 D-H]

2. The view of the Division Bench that the summary remedy provided for by s. 6 could not be resorted to unless the alleged encroachment was of "a very recent origin" cannot be stretched too far. It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is *bona fide*. Facts which raise a *bona fide* dispute of title between the Government and the occupant must be adjudicated upon by the ordinary courts of law. The duration of occupation is relevant in the sense that a person who is in occupation of a property openly for

an appreciable length of time can be taken *prima facie* to have a *bona fide* claim to the property requiring an impartial adjudication according to the established procedure of law. In the instant case, the long possession of the respondents and their predecessors-in-title raised a genuine dispute between them and the Government on the question of title. Whether the title to the property had come to be vested in the Government as a result of acquisition and whether the heir of the original owner had encroached upon that property and perfected his title by adverse possession had to be decided in a properly constituted suit.

[508 A-D; 508 E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2031 of 1977.

Appeal by special leave from the judgment and order dated the 30th June, 1977 of the Andhra Pradesh High Court in Writ Petition No. 905 of 1975.

WITH

Civil Appeal Nos. 136 & 137 of 1978.

From the judgment and order dated the 30th June, 1977 of the Andhra Pradesh High Court in Writ Petition Nos. 796 & 922 of 1975 respectively.

Ramachandra Reddy, Advocate General and *B. Parthasarthi* for the Appellants.

P. Rama Reddy and *A.V.V. Nair* for Respondent No. 2 in CA. 2031, R. 3 in 136 & R. 2 in 137.

A. Subba Rao for RR 1 & 2 in CA. 136/78.

A.K. Sen, K. Rajendra Choudhury, G.R. Subbaryan, I. Koti Reddy and *Mahabir Singh* for Respondent No. 1 in CA. 137/78.

B. Kanta Rao for Respondent No. 1 in CA. 2031/77.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J. These three appeals arise out of a common judgment dated June 30. 1977 of a Division Bench of the High Court of Andhra Pradesh, setting aside the judgment of a learned single Judge dated November 18, 1975 in Writ Petitions Nos. 1539 of 1974 and 798 of 1975. Civil Appeal No. 2031 (NCM) of 1977 is by special leave while the other two appeals are by certi-

ficate granted by the High Court. The question which these appeals involve is whether the appellant, the Government of Andhra Pradesh, has the power to evict the respondents summarily in exercise of the power conferred by the Andhra Pradesh Land Encroachment Act, 1905. This question arises on the following facts :

We are concerned in these appeals with three groups of lands situated in Habsiguda, Hyderabad East Taluk, Andhra Pradesh. Those lands are : R.S. No. 10/1, which corresponds to plot No. 94 admeasuring 10 acres and 2 guntas, R.S. No. 10/2 which corresponds to plot No. 104 admeasuring 9 acres and 33 guntas ; and R.S. Nos. 7, 8 and 9 which correspond to plot No. 111 admeasuring 26 acres and 14 guntas. These lands belonged originally to Nawab Zainuddin and after his death, they devolved on Nawab Habibuddin. Sometime between the years 1932 and 1937, certain lands were acquired by the Government of the Nizam of Hyderabad under the Hyderabad Land Acquisition Act of 1309 Fasli, the provisions of which are in material respects similar to those of the Land Acquisition Act, 1894. The lands were acquired for the benefit of the Osmania University which was then administered as a Department of the Government of Hyderabad. The University acquired an independent legal status of its own under the Osmania University Revised Charter, 1947, which was promulgated by the Nizam.

The question whether the aforesaid three plots of land were included in the acquisition notified by the Government of Nizam became a bone of contention between the parties, the Osmania University contending that they were so included and that they were acquired for its benefit and the owner, Nawab Habibuddin, contending that the three plots were not acquired. On February 13, 1956 the Osmania University filed a suit (O.S. No. 1 of 1956) against Nawab Habibuddin, in the City Civil Court, Hyderabad, claiming that the three lands were acquired by the Government for its benefit and asking for his eviction from those lands. That suit was dismissed in 1959 on the ground that plot No. 111 was not acquired by the Government and that though plots Nos. 94 and 104 were acquired, the University failed to prove its possession thereof within twelve years before the filing of the suit. In regard to plots Nos. 94 & 104, it was found by the trial court that Habibuddin had encroached thereupon in the year 1942, which was more than twelve years before the filing of the suit. Civil Appeal No. 61 of 1959 filed by

A the University against that judgment was dismissed on January 24, 1964 by the High Court which affirmed the findings of the trial court. The State Government was not impleaded as a party to those proceedings.

On May 8, 1964 the Osmania University wrote a letter to the B Government of Andhra Pradesh, requesting it to take steps for the summary eviction of persons who were allegedly in unauthorised occupation of the 3 plots. On December 8, 1964, the Tahsildar, Government of Andhra Pradesh, acting under section 7 of the Land Encroachment Act, 1905, issued a notice to Nawab Habibuddin to vacate the lands and on December 15, 1964 the Tahsildar passed an C order evicting him from the lands. The appeal filed by Habibuddin to the Collector was dismissed in 1965 and the appeal against the decision of the Collector was dismissed by the Revenue Board in 1968. During the pendency of the appeal before the Revenue Board, the respondents purchased the plots from Habibuddin for valuable consideration and on the death of Habibuddin, they were D impleaded to the proceedings before the Revenue Board. They preferred an appeal from the decision of the Revenue Board to the Government but that appeal was dismissed on November 26, 1973.

E On March 19, 1974, the respondents filed Writ Petitions in the High Court of Andhra Pradesh challenging the order by which they were evicted from the plots summarily under the provisions of the Act of 1905. The learned single Judge dismissed those Writ Petitions observing :

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> "The question whether the lands with which we are concerned in the writ petition were acquired by the Government or not and the question whether the Government had transferred its title to the University or not are questions which cannot properly be decided by me in an G application under article 226 of the Constitution. The appropriate remedy of the petitioners is to file a suit to establish their title."

The learned Judge held that :

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> "Though the title of the Government is not admitted by the alleged encroacher, there is a finding by the Civil

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> Court that there was encroachment by the alleged encroacher. That is sufficient to entitle the Government to initiate action under the provisions of the Land Encroachment Act."

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Three appeals were preferred to the Division Bench against the judgment of the learned single Judge, two of them being by the petitioners in one writ petition and the third by the petitioner in the other writ petition. The Division Bench, while setting aside the judgment of the learned single Judge, held :

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> "The question whether the lands belong to Osmania University or not will have to be decided as and when the Government comes forward with a suit for the purpose. Even if we assume for the purpose of our judgment, as we are not pronouncing any conclusion as to whether the land vested in the Government or University, that the Government is the owner, the dispute going back from 1942 cannot be dealt with in summary proceeding under section 7 of the Land Encroachment Act."

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The summary remedy provided by section 7, according to the Division Bench, cannot be resorted to "unless there is an attempted encroachment or encroachment of a very recent origin" and further, that it cannot be availed of in cases where complicated questions of title arise for decision.

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We are in respectful agreement with the view taken by the Division Bench, subject however to the observations made herein below. The Andhra Pradesh Land Encroachment Act, 1905, was passed in order "to provide measures for checking unauthorised occupation of lands which are the property of Government." The preamble to the Act says that it had been the practice to check unauthorised occupation of lands which are the property of the Government "by the imposition of penal or prohibitory assessment or charge" and since doubts had arisen whether such practice was authorised by law, it had become necessary to make statutory provisions for checking unauthorised occupations. Section 2 (1) of the Act provides that all public roads, streets, lands, paths, bridges, etc. shall be deemed to be the property belonging to Government, unless it falls under clauses (a) to (e) of that section. Section 2 (2) provides that all public roads and streets

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A vested in any public authority shall be deemed to be the property of the Government. By section 3 (1), any person who is in unauthorised occupation of any land which is the property of Government, is liable to pay assessment as provided in clauses (i) and (ii) of that section. Section 5 provides that any person liable to pay assessment under section 3 shall also be liable, at the discre-
B tion of the Collector, to pay an additional sum by way of penalty. Sections 6 (1) and 7, which are relevant for our purpose, read thus :

C "Sec. 6 (1) Any person unauthorisedly occupying any land for which he is liable to pay assesssment under section 3 may be summarily evicted by the Collector, Tahsildar or Deputy Tahsildar and any crop or other product raised on the land shall be liable to forfeiture and any building or
D other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector, Tahsildar, or Deputy Tahsildar may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector,
E Tahsildar or Deputy Tahsildar and any property so forfeited shall be disposed of as the Collector, Tahsildar or Deputy Tahsildar may direct."

F "Sec. 7. Before taking proceedings under section 5 or section 6, the Collector or Tahsildar or Deputy Tahsildar as the case may be shall cause to be served on the person reputed to be in unauthorised occupation of land being the property
G of Government, a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 5 or section 6."

H It seems to us clear from these provisions that the summary remedy for eviction which is provided for by section 6 of the Act can be resorted to by the Government only against persons who are in

unauthorized occupation of any land which is "the property of Government". In regard to property described in sub-sections (1) and (2) of section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorised occupation of property which is declared by section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But section 6 (1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land "for which he is liable to pay assessment under section 3". Section 3, in turn, refers to unauthorised occupation of any land "which is the property of Government". If there is a *bona fide* dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by section 6 for evicting the person who is in possession of the property under a *bona fide* claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a *bona fide* claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

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A The view of the Division Bench that the summary remedy provided for by section 6 cannot be resorted to unless the alleged encroachment is of "a very recent origin", cannot be stretched too far. That was also the view taken by the learned single Judge himself in another case which is reported in *Meherunnissa Begum* v. *State of A.P.*(1) which was affirmed by a Division Bench.(2) It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is *bona fide*. Facts which raise a *bona fide* dispute of title between the Government and the occupant must be adjudicated upon by the ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, *prima facie*, to have a *bona fide* claim to the property requiring an impartial adjudication according to the established procedure of law.

The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary inquiry contemplated by sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddin from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily.

For these reasons, we uphold the judgment of the Division Bench of the High Court and dismiss these appeals with costs.

(1) [1970] 1 ALT 88.
(2) [1971] 1 A.L.T. 292; AIR 1971 A.P. 382.

We do not propose to pass any orders on Civil Misc. Petitions Nos. 18974, 18975, 18976, 18497, 18498 and 18499 of 1981 which have been filed for adding certain parties as respondents to these appeals. Those petitions involve the question of a Will alleged to have been made by Nawab Habibuddin in favour of Entashamuddin alias Anwar Siddiqui and his elder brother. We cannot go into the validity of that Will and other incidental questions in these appeals. A B

H.L.C. *Appeals dismissed.*