UNION OF INDIA & ANR.
v.
S. NARASIMHULU NAIDU (DEAD) THROUGH LRS. AND ORS.

(Civil Appeal No. 2049 of 2013)

AUGUST 27, 2021

[SANJAY KISHAN KAUL AND HEMANT GUPTA,* JJ.]

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 – ss.2(d) and 8 – Government Grants Act, 1895 – s.2 – Registration Act, 1908 – s.17 – Respondents-applicants' case that their father had purchased 2 acres 27 guntas of land from one 'SA' and he was put in possession – Out of the total land purchased by the father of applicants, some was taken over for the construction of roads – It was also stated that their father sold the land measuring 4971.5 sq. yard, however, the remaining 7128.5 sq. yards was retained by him – Military Contract Committee started constructing sheds on the land (measuring 4971.5 sq. yards) sold by their father – Purchaser of the said land (measuring 4971.5 sq. yards) filed suit against Union of India and respondents were also made party – First suit was decreed declaring the purchasers as title holders – Respondents as legal heirs filed an application u/s.8 of the Act alleging that the land measuring 7128.5 sq. yards was grabbed by Union of India and relied on the first suit decreed in favour of purchasers – Tribunal held that findings in the first suit binds the Union of India and applications were allowed – The High Court affirmed the decision of the Tribunal – Questions required to be decided before the Supreme Court: (i) whether the order passed in the first suit filed by the plaintiff as affirmed by the High Court operate as res judicata?; (ii) whether the appellants have proved their title over the land in question?; (iii) whether appellant is a land grabber within the section 2(d) of the Act – Held: Though the first suit is between the same parties, but the subject matter is not the same – Since the issue in the suit was restricted to 4971.5 sq. yard, the decree would be binding qua that extent only – The issue cannot be said to be barred by constructive res judicata as per Explanation IV as it applies to the plaintiff in a later suit – The appellants have denied the claim of the plaintiffs in the first suit to the extent that

* Author

it was the subject matter of that suit alone – Therefore, the decree in the first suit will not operate as res judicata in the subsequent matters – Since the land in question was transferred from the State, document of title is not required to be registered in terms of s.17 of the Registration Act, 1908 and/or in terms of Government Grants Act, 1895 – The letter dated 19.03.1958 completes the transfer when the possession of the land measuring 1500 acres and 24 guntas was handed over to Union – Appellants claim possession of 1500 acres and 24 guntas, although appellants have lost claim of 4971.5 sq. yards which is falling as part of 2 acres and 20 guntas, but that would not lead to losing of title of appellants over the entire land measuring 2 acres and 20 guntas – Further, military land register, which is also a public document (s.74 of the Evidence Act) shows possession of the appellants over the land – Appellants are owner of the land – Therefore, appellants are not land grabbers.

Disposing of the appeal, the Court Held:

1. **The following questions are required to be decided in the present appeals: (i) whether the order passed in the first suit filed by the plaintiff as affirmed by the High Court operate as *res judicata*?; (ii) whether the appellants have proved their title over the land in question?; (iii) whether appellant is a land grabber within the section 2(d) of the Act? [Para 24]**

2. **The The applicants have claimed possession from the appellants primarily on the ground that in the suit filed by the plaintiffs on 14.4.1965, the basis of the suit was purchase of land by the plaintiffs from the father of the applicants. Since the plaintiffs have been found to be the owners on the basis of purchase of land from the father of the applicants, therefore, the issue of title decided in the said suit would operate as *res judicata*. Therefore, the appellants herein are land grabbers having no title over the land in question. It may be reiterated that the plaintiffs had purchased land measuring 4971.5 sq. yards from the father of the applicants whereas the remaining land measuring 7128.5 sq. yards was retained by the applicants. Therefore, the decree in the first suit was only in respect of the schedule property in the first suit i.e. 4971.5 sq. yards. The patta, the basis of title of the applicants had not been produced in evidence before the Tribunal. Thus, the basic document of title had not been produced. [Para 25]**

3. In the first suit, the father of the applicants had not filed any counter claim to assert title or possession over the land in question. The land admeasuring 4971.5 sq. yards was a schedule property and the subject matter of the first suit. The issue no. 1 in the first suit was in respect of the possession of the plaintiffs and their predecessor-in-interest over the *'suit land'* within 12 years prior to the suit. Therefore, the rights of the plaintiffs were examined in respect of such suit land measuring 4971.5 sq. yards alone, although, to return the finding on possession and title, possession of the father of the applicants over the land purchased by the Plaintiff was clubbed together on the basis of patta claimed to be granted to 'SA', though not produced or proved on record. [Para 26]

4. In the second suit filed by the applicants, the entire basis of suit was the findings returned in the first suit. There is no independent evidence produced in respect of purchase of land by 'SA' and the legality or validity of Patta issued to him. Although, applicants have asserted that they have been visiting the land in question to verify their possession but apart from such plea, there is no evidence that there was any covert and overt act on the part of the plaintiffs to assert possession over the land in question. [Para 27]

5. In fact, the appellants had entered into a settlement with the plaintiffs by which some of the land in possession was given to the decree holder in execution with the leave of the Court on 19.8.1995. Such action would show the assertion of title by the appellants so as to enter into exchange of land in satisfaction of the decree. The father of the applicants was party in the execution proceedings but has not objected to the exchange. It necessarily leads to an inference that the father of the applicants was not in possession and has not asserted the title or possession over the remaining land measuring 7128.5 sq. yards. On the other hand, the appellants have categorically asserted that they are in possession of the land from the date of transfer in the year 1958 when the Collector of Hyderabad handed over the possession to them. The appellants continued to be in unhanded possession over the last 30 years. [Para 28]

The applicants have not claimed any title to the land which is claimed to be in their possession and the subject matter of the first suit was only 4971.5 sq. yards. Hence, the decree in the said suit is binding qua the land in suit only. [Para 36]

6. Though the first suit is between the same parties, but the subject matter is not the same. For *res judicata* to apply, the matter in the former suit must have been alleged by one party and either denied or admitted, expressly or impliedly by the other. Since the issue in the suit was restricted to 4971.5 sq. yards, the decree would be binding *qua* to that extent only. The issue cannot be said to be barred by constructive *res judicata* as per Explanation IV as it applies to the plaintiff in a later suit. The appellants have denied the claim of the plaintiffs in the first suit to the extent that it was the subject matter of that suit alone. Therefore, the decree in the first suit will not operate as *res judicata* in the subsequent matters. [Para 37]

7. Now, the second question as to whether the appellants have proved their title over the land in question is examined. The appellants claim title over the land in question. Since the land is transferred from the State, document of title is not required to be registered in terms of Section 17 of the Registration Act, 1908 and/or in terms of Government Grants Act, 1895. The area of Asafnagar lines is 378 acres 16 guntas. In the appendix to the letter dated 10.10.1956, the details of the land comprising in the area measuring 378 acres 16 guntas is mentioned, which includes 2 acres 20 guntas of Miniature Rifle Range. Such land is reflected as in a Mallapally Area. The total area of Mallapally area and Asafnagar Lines is 378 acres and 16 guntas. The Mallapalli Lines is non-ISF Lines measuring 450 acres and 12 guntas which is distinct from Asafnagar Lines falling in ISF area measuring 378 acres and 16 guntas. Thus, Mallapally area and Mallapalli Lines are two different parcels of the land. The land in question herein is part of Asafnagar Lines handed over to the appellants as ISF Lines. The letter dated 19.3.1958 completes the transfer when the possession of land measuring 1500 acres and 24 guntas was handed over to the Union. [Para 41]

The appellants claim to be in possession over the land measuring 1500 acres and 24 guntas from the year 1958.

Although, the appellants have lost claim in respect of land measuring 4971.5 sq. yards which is falling as part of 2 acres and 20 guntas of land, but that would not lead to losing of the title of the appellants over the entire land measuring 2 acres and 20 guntas. [Para 42]

8. Therefore, by virtue of the provisions of Government Grants Act, 1895 read with Section 17(2)(vii) of the Registration Act, 1908, transfer of land to the appellant is complete. The appellant is the owner of the aforesaid land. The applicants have not produced any document regarding the patta in favour of Shaik Ahmed. They have not proved the title of their vendor so as to claim a rightful title over the land in question. Further, no patta could be granted to the applicants as the land was transferred by the State in their favour on 19.3.1958 and possession was claimed on the strength of sale deeds executed on 12.12.1959. [Para 43]

9. Apart from the fact that the transfer of title in favour of the Union is complete when the possession was delivered, but even thereafter, the military land register and general land register produced by the appellants show the possession of the appellants over such land. The military land register and general land register are public documents within the meaning of Section 74 of the Indian Evidence Act, 1872 (Evidence Act) containing the records of the acts of the sovereign authority i.e., the Union as well as official body. Still further, Section 114 of the Evidence Act grants presumption of correctness being an official act having been regularly performed. Therefore, in the absence of any evidence to show that such records were not maintained properly, the official record containing entries of ownership and possession would carry the presumption of correctness. In view of the transfer of land on 10.10.1956 followed by delivery of possession on 19.3.1958 and continuous assertion of possession thereof, it leads to the unequivocal finding that appellants are owners and in possession of the suit land. [Para 44]

10. The third question is to examine whether the appellants are land grabbers and the Tribunal has jurisdiction to entertain a petition under the Act. The objection of the appellants that they are not land grabbers and that the State Legislature will

have no jurisdiction over the property of the Union need not to be examined in view of the finding that the appellants are in fact owners of the land in question. [Para 45]

K. Ethirajan (Dead) by LRs. v. Lakshmi & Ors. **(2003) 10 SCC 578 : [2003] 4 Suppl. SCR 33 – held inapplicable.**

Alka Gupta v. Narender Kumar Gupta **(2010) 10 SCC 141 : [2010] 11 SCR 756;** *Daryao & Ors. v. State of U.P. & Ors.* **AIR 1961 SC 1457 : [1962] 1 SCR 574;** *State of Karnataka & Anr. v. All India Manufacturers Organisation & Ors.* **(2006) 4 SCC 683 : [2006] 1 Suppl. SCR 86;** *Ramadhar Shrivas v. Bhagwandas* **(2005) 13 SCC 1;** *Mahboob Sahab v. Syed Ismail and Others* **(1995) 3 SCC 693 : [1995] 2 SCR 975;** *Govindammal (Dead) by LRs & Ors. v. Vaidiyanathan & Ors.* **(2019) 17 SCC 433 : [2018] 11 SCC 1092 – relied on.**

Munni Bibi (since deceased) & Anr. v. Tirloki Nath & Ors. **AIR 1931 PC 114 – referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2049 of 2013.

From the Judgment and Order dated 25.04.2011 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition No. 26811 of 2008.

With

Civil Appeal No. 13 of 2012.

Vinay Navare, B. Adi Narayana Rao, R. Balasubramanian, Sr. Advs., D. Bharat Kumar, Tadimalla Bhaskar Gowtham, Aman Shukla, Hathindra Manda, Dasari Muralee Mohan, Abhijit Sengupta, Pramod Dayal, Ms. Prerna Singh, K. Subba Rao, K. Satyanarayana Murthy, Aniruddha P. Mayee, Chandra Prakash, Akshay Amritanshu, Ms. Swati Ghildiyal, Arvind Kumar Sharma, Advs. for the appearing parties.

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

1. The present appeals are directed against an order passed by the High Court of Judicature at Andhra Pradesh on 25.4.2011 whereby an order passed by the Special Court, Hyderabad[1] under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982[2] on 19.9.2008 was not interfered with.

2. Brief facts leading to the present appeals are that the respondent Nos. 1 to 6[3] being legal heirs of Late Sri S.V. Srinivasulu Naidu filed an application under Section 8 of the Act before the Tribunal alleging that the land measuring 7128.5 sq. yards in Survey No. 299/2 (old Survey No. 403/1), Ward No. 8, Block-3, Shaikpet Village, Hyderabad, is the land grabbed by the Union of India. It was pleaded that a notification is required under Section 8(6) of the Act, which was published in the extra ordinary Gazette of Andhra Pradesh on 22.1.2004 but no objections against the same were received. The applicants alleged that their father had purchased 2 acres 27 guntas of land in Survey No. 299/2 from one Shri Shaik Ahmed under two registered sale deeds dated 12.12.1959 (Exhs. A1 and A2). The purchaser, i.e., the father of the applicants was put in possession thereof. Out of the total land purchased by the father of the applicants, 7 guntas of land was taken over for the purpose of widening of road and remaining part i.e. 2 acres 20 guntas (12100 sq. yards) was held by him. It was further alleged by the applicants that their father sold the land measuring 4971.5 sq. yards out of 12100 sq. yards in Survey No. 299/2 with specific boundaries via registered sale deed dated 20.3.1964 (Ex.A3). The remaining part of the land i.e., 7128.5 sq. yards was however retained by their father.

3. It was alleged that the Military Contract Committee started constructing sheds on the land sold by the father of the applicants. As a result, the purchasers filed original suit[4] on or about 14.4.1965 against the Union of India, State of Andhra Pradesh and the father of the applicants, which was later assigned as suit OS No. 175 of 1970 (Old

1 For short, the 'Tribunal'
2 For short, the 'Act'
3 Hereinafter referred to as the 'applicants'
4 Hereinafter referred to as the 'first suit'

No. 72 of 1965). The Plaintiff claimed that his vendor Shaik Ahmed and then the father of the applicants was the owner in possession of the property since purchase of the property on 20.3.1964, but the contractors of the first defendant, the appellant herein, trespassed into the schedule property on 12.7.1964. The Plaintiff thus sought possession of the land purchased or in the alternative, recovery of sale consideration paid to the father of the applicants. It was *inter-alia* pleaded as under:-

"4. Under these circumstances, Sri Shaik Ahmed sold the entire Ac.2-27 guntas of the said property to Sri S.V. Srinivasulu Naidu, I.P.S., Superintendent of Police, Crime Branch (C.I.D.), Hyderabad, the 3rd defendant herein by means of two sale deeds dated 12-12-1959 and put the latter in possession of the same. While in possession and enjoyment of the same, and paying taxes thereon, the said Sri S.V. Srinivasulu Naidu (the third defendant herein) sold 4971 ½ square yards of site out of the said S.No.299/2, of Shaikpet village more fully described in the schedule given below and herein after called the schedule property to the plaintiffs herein by means of a sale deed dated 20-3-1964 for a consideration of Rs. 28,000/-. Ever since the date of sale, the plaintiffs herein have been in undisputed possession and enjoyment of the schedule property. Thus the plaintiffs are the absolute owners of the schedule property enjoying the same with absolute rights."

4. The schedule property was the property purchased by the plaintiff. In the written statement filed by the father of the applicants, it was stated that the said defendant had perfect right and legal title to the land when he effected sale in favour of the Plaintiffs. The said defendant asserted that he had no objection to the Plaintiff suit being decreed. It is pertinent to mention that the said defendant had not filed any counter claim of possession of the remaining land after selling the land to the Plaintiff. The parties went to trial on the following issues:

"1. Whether the plaintiffs and their predecessor in interest had title to and possession over the suit land within 12 years prior to the suit?

2. Whether the suit land belonged to Ex-Hyderabad State Army and whether it was subsequently handed over to defendant No.1 in 1958?

3. Whether the patta and the settlement relied upon by the plaintiff were cancelled and if so, whether the cancellation is legal and valid?

4. Whether the suit land was auctioned by defendant No.1 for grazing and grass cutting?

5. To what damage if any, are the plaintiffs entitled against the 3rd defendant alternatively?

6. To what relief, if any are the plaintiffs entitle?"

5. The Learned Trial Court decided Issue No. 1, whereby the following findings were recorded: -

"19. Another piece of evidence available from the material on record is Ex.B.22. It is a letter from the Tahsildar (West) to the commissioner of the Municipality wherein it is clearly mentioned that No.299/2 is the patta land of Shaik Ahmed and that Abdul Gani named mentioned has no concern with it. Third one is the order of the land record officer B.21 wherein it is clearly mentioned that S.No.129/(ld) and 403 (new) measuring (7) acres was granted as patta to Shaik Ahmed this material is quite sufficient to conclude that Shaik Ahmed has his possession over the suit land since 1339 Fasli."

20. Next point to be considered is whether Shaik Ahmed sold the suit land to the third defendant. His totally manifest by the two agreement of sale B.2 and B.3 and the two subsequent register sale deeds Ex.B.4 and B.5. In this matter B.7 entered witness box. Shaik Ahmed is stated to have died few years ago. DW-2 has testified this matter. Third defendant as DW.1 stated that he purchased the land in 1959 and shortly after one Heeralal filed a suit against him claiming the suit land. That suit ultimately ended in a compromise. Ex.B.26 and B.27 are the two receipts of Heeralal in acknowledgement of the receipt of money and also about compromising the matter.

21. Ex.B.28 to show that Chintal Basti Samshan Committee member objected and alleged that a portion of the suit land was the grade land and therefore, the third defendant cannot occupy it. In that connection, the third defendant made a compromise by giving some land as well as some cash amount to the said committee members and ended that matter. According to D.3 he did not find time to construct his proposed house on account of the above mentioned

dispute. Meanwhile the plaintiffs approached him and he sold the suit land to them. The Sale Deed executed by him i.e. within four months the alleged encroachments was made. In this brief period the plaintiffs were not expected to do any thing in exercising of their rights as purchasers. These facts coupled with the documents stated above, are quite sufficient to conclude that *the plaintiff and their predecessors in title and undoubted by their possession over the suit land within twelve years prior to the alleged trespass*. In other words, the plaintiffs have successfully, discharged the onus placed on them under issue No.1, therefore find this issue in the affirmative.

(Emphasis Supplied)

27……Thus viewed from any perspective there is no material to believe that the suit belonged to the Ex Hyderabad State Army and that is was subsequently handed over by the Second defendant to the first defendant. I therefore, find this issue in the negative."

6. The suit was thus decreed on 13.8.1970 declaring the plaintiffs as title holders of the suit property. An appeal was filed by the Union of India before the High Court of Andhra Pradesh but the said appeal was dismissed on 31.3.1975. Thereafter, the plaintiffs in the suit filed execution petition in which the applicants had chosen not to participate. The father of the applicants died on 17.6.1993. Thereafter, the applicants invoked the jurisdiction of the Tribunal.

7. The applicants asserted before the Tribunal that they are original owners of the land in question and the Government had no right or title over the property. While relying upon proceedings initiated by the Plaintiffs, the applicants asserted as follows:-

"……..The said suit as contested and the Hon'ble 4th Addl. Judge, City Civil Court, Hyderabad had decided the issues of title and possession along with other issues vide judgment and decree dated 13.08.1970. It is submitted that the Hon'ble IV Additional Judge had held that our father is the owner and was in possession of the property since more than twelve years."

8. The appellant herein filed a written statement, *inter alia*, pleading that the application is not maintainable as it does not disclose the facts relating to the alleged land grabbing. It was also pleaded that the facts

narrated by the applicants themselves show that they have lost their possession long ago and after being dispossessed, the applicants had failed to take any steps to get the land restored to them. The filing of the suit and dismissal of appeal was accepted. It was also pleaded that in execution of the previous decree, the decree holder and the applicants had entered into a written compromise which was filed in execution application No. 220/95 seeking recording of satisfaction of the decree. In such proceedings, the Union proposed for exchange of the defence land with the decretal land in response to a letter dated 19.8.1995. In terms of such compromise, possession of the land measuring 4971.5 sq. yards was delivered to the decree holder on 14.12.1995. It was stated that the schedule land is a defence land and appellant is not a land grabber. It was further asserted that the Tribunal was not competent to decide the title of the appellant for it being defence land. Still further, it was stated that the land measuring 2 acres 20 guntas was in possession of the applicants since 1.4.1958 when it was handed over to the Government of India, Ministry of Defence by the Collector, Hyderabad. The stand of the appellant in the written statement inter-alia is as under:-

"7……. Therefore, the Statement of the applicant that since the construction was started in the land belonging to the subsequent purchasers, they filed the suit is appears to be absolutely ridiculous because the whole extent of the land measuring 2 acres 20 guntas was under the possession of the defence and the applicant had not claimed the suit schedule land at any point of time before 16.01.1996. So it could be clearly seen that the suit schedule land was under the possession of the defence more than 30 years before claiming by the applicant. The contention of the applicant that IV Additional Judge, City Civil Court, Hyderabad held that his father is the owner and was in possession of the property since more than 12 years is wrong. The Hon'ble Judge in issue No. 6 had stated that the "Vendor", the third defendant has satisfactorily proved by adducing oral as well as documentary evidence that he as well as his predecessors-in-title, Shaik Ahmed were in possession of the suit land i.e. only 4971 sq. yards whereas the applicant is claiming the remaining extent of land msg 7128.5 sq. yards.

8……. To settle the matter, the Government of India, Ministry of Defence vide post copy of telegram No. 31/27/L/L&C/64

dated 11.08.1995 conveyed approval for exchange of the defence land with that of decretal land within Pension Paymaster's Office. Accordingly the Counsel for the decree holders have accepted the said exchange proposal on 19.08.1995. On receipt of the acceptance, joint survey was conducted to mark the decretal land measuring 4971.5 sq. yards. Accordingly a plan showing the total extent of the defence land, the land already decreed by the lower court in OS No. 175/1970. Accordingly an extent of land admeasuring 4971.5 sq. yards handed over the decree holders by a proceedings dated 14.12.1995 of the Advocate Commissioner and the Contempt Case No. 411/1995 was finally closed on 15.12.1995, since land was handed over to the parties as per the compromise Memo.

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10 .....The above land is under the possession of the Union of India for the last several years which is more than 30 years. Shri S.V. Srinivasulu Naidu so called owner of the subject land did not filed any suit of claiming the property which is under the occupation of the Union of India for the last more than 30 years. The said S.V. Srinivasulu Naidu was only Defendant No.3 in the above suit and appeal and as such by virtue of the decree passed in the said cases do not create a right in favour of Sri S.V. Narsimhulu Naidu to claim any land which is under the occupation of Union of India on the basis of below grounds:-

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13. With regard to unnumbered para 14 to 16 of the petition, it is submitted that the contention of the applicant in this para is that they are the owners of the schedules land is hereby denied. Land admeasuring 2 acres 20 guntas situated at Shaikpet Village, Golconda Mandal Hyderabad which was the property of Nizam forces and used as "Minature Rifle Range" was handed over to the Government of India, Ministry of Defence on 01.04.1958 vide Board proceedings dated 19.03.1958 by the Collector and the same is vested with the Government of India under Article 295 (i) of the Constitution of India. Being a defence land, the department is not the land grabber. For the defence land enactment of the Parliament is applicable whereas Land Grabbing Court is having jurisdiction only on the State Land.

It is submitted that on the basis of uninterrupted possession of the defence over the schedule property from more than last 30 years and as the Land Grabbing Court is having the jurisdiction only on the State Land the above case is not maintainable before this Hon'ble Court….".

9. The learned Tribunal framed the following issues on the basis of pleadings of the parties:

"(1) Whether the applicants are the owners of the application schedule property?

(2) Whether the rival title set up by the respondents is true, valid and binding on the applicants?

(3) Whether the respondents are land grabbers within the meaning of the Act XII of 1982?

(4) Whether the respondents prescribed title by adverse possession?

(5) To what relief?"

10. The appellants had never asserted their possession as adverse or hostile to the knowledge of true owner. The plea of the appellant was that they are in possession of the said property as owners for the last 30 years. Therefore, issues were not correctly framed. Accordingly, Issue Nos. 1 and 2 were decided together.

11. In evidence, the applicants examined PW 1 - S. Janardhan who had produced sale deeds by which their father had purchased the land but the patta said to be executed in favour of Shaik Ahmed was not produced. A perusal of the two sale deeds Ex A1 and A2 executed by the said Shaik Ahmed also does not disclose the date of any patta. Thus, in the present proceedings, neither the sale deeds have mentioned about the patta nor such patta had been produced or proved on record. In fact, the entire claim is based upon the judgment in the first suit, which is evident from the statement of PW 1, when he said that "a Division Bench of the Hon'ble High Court reported in 1990 has categorically held that once the Hon'ble Court upheld the title and possession in earlier proceedings, it is not open for any one of the authorities to deny the same taking untenable pleases. Once the source of title is common, any party taking a different plea in subsequent proceedings is barred by *res judicata*".

12. The Tribunal *inter-alia* returned the following findings:

"52. Srinivasulu Naidu purchased the land under Exs.A-1 and A-2 in the year 1959. *There is a finding in that suit that 12 years prior to filing of the suit, Shaik Ahmed and Srinivasulu Naidu had been in possession of the land*. So the land has been in their continuous possession since 1949-50. Delivery of Acs.2.27 guntas of land to the Defence by the State Government is only a paper delivery as per Ex.B14 proceedings. So it can be inferred that actual delivery of land of Acs. 2.27 guntas was not made and it is only a paper delivery. This land alone was not alleged to have been delivered as per Ex.B14 proceedings dt. 19-3-58. About Acs.1500-24 guntas of land in four different plots in different areas was ordered to be delivered by the State Government to the Union of India. According to the Union of India, Acs.2.27 guntas is part of Asfanagar lines which is shown as item No. V in Ex.B-14 at page No.2.

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57. The contention of the Advocate for the respondents is that when the Union of India claimed that it is in possession since 1958 in the suit OS 175/70, title to the balance land is to be decided elsewhere. It is further contended that Exs. A1 and A2 sale deeds are valid and title passed to the applicants but to show whether Shaik Ahmed had title or not for the remaining land, suit is not filed by the applicants. Therefore, the applicants waived their right and their claim is time barred. *When a finding is given in the suit that State Government which gave land to Union of India has no title and that Srinivasulu Naidu and his vendor had title, there is no need for Srinivasulu Naidu to file another suit for declaration of his title*.

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59. If the land which was delivered to R-1 herein and to the other decree holders in execution proceedings, in exchange of suit schedule land owned by Srinivasulu Naidu, the exchange itself is illegal. Without establishing title to the remaining land by the Union of India the Union of India has entered into the compromise for exchange of the Application schedule land. A Compromise can be made between the decree holders and judgment debtors with regard to the decree schedule land only but it should not be in respect of some other

land not covered by the decree. For retaining the decreetal schedule property by Judgment Debtors, some other land which is not subject matter of the suit was given to the decree holders. Union of India was aware that this land which was delivered to decree holders in exchange was mentioned as boundary to the decreetal schedule property belonged to Srinivasulu Naidu. Srinivasulu Naidu was a party to the suit. *Even though no relief is granted against Srinivasulu Naidu in the said suit, at-least notice should be given to Srinivasulu Naidu or Srinivasulu Naidu should be made party to the compromise, when he claimed title and possession to that land which was given to the decree holders in exchange.*

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90. In the case on hand the title to the application schedule land is not in issue in the earlier suit. The issue was with regard to the title for the suit schedule land which was purchased by the plaintiffs from Srinivasulu Naidu. Exs.A1 and A2 are the sale deeds which were relied on by the plaintiffs to establish their title for 4971 sq. yards. For the remaining land there was no issue. No finding is given with regard to the title for the remaining land of Srinivasulu Naidu. The remaining land of Srinivasulu Naidu's is shown as boundary on three sides of the suit land purchased by the plaintiffs from Srinivasulu Naidu. A finding is given in the suit that the land purchased by Srinivasulu Naidu under Ex.A1 and A2 is patta land of Shaik Ahmed. To decide the title of the plaintiffs in 4971 sq. yards title of Srinivasulu Naidu covered by Exs.A1 and A2 was also considered. Therefore, there is identity of title in OS 175/70 and in this land grabbing case. Hence, the finding in the suit binds the respondents.

91. *The findings in the suit binds the Union of India as the title in the two litigations is one and the same. The State Government did not prefer the appeal against the Judgment and decree in OS 175/70. The Union of India claims title through the State Government. In the suit, a finding is given that the land is a patta land of Shaik Ahmed and not the State Government land.* Therefore, that finding became final and binds both the Governments and other parties to the suit. The appeal CCCA No-30/1972 preferred by the Union of India against the judgment and decree passed in suit OS 175/70 was dismissed by the Hon'ble High Court. A finding was given by the High Court that

the land covered by Exs.B-38 marked in the i.e. the land covered by Ex.B25 herein was not correlated to the suit land. The suit land is part of the land covered by Exs.A1 and A2 sale deeds herein. The Union of India contends that the entire land of Acs.2.20 guntas was delivered as per Ex.B38 proceedings. In the letter dt. 25-4-1960 which was addressed by the Tahsildar, Hyderabad to the Collector Hyderabad District it is mentioned that the tounch map available in this office shows that Sy.No. 299/2 is the same place where the rifle range is shown in the map of I.S.F lands, Mallepally. Neither the tounch map nor the map of ISF lands has been produced. The letter therefore loses all its importance. The letter however, shows that patta was sanctioned to Shaik Ahmed prior to the preparation of the maps." *(Emphasis supplied)*

13. The High Court in a petition under Article 226 of the Constitution affirmed the order of the Tribunal and held as under:

"17. Originally, the land to an extent of Acs.2.27 gts in Sy.No. 299/2 was purchased by S.V. Srinivasulu Naidu, the father of the applicants under Exs.A1 and A2 sale deeds. After Ac.0.07 gts of land was affected in road widening, the remaining extent of land is Acs.2.20 gts equivalent to 12,100 sq. yards, out of which, 4,971 sq. yards was sold by the father of the applicants to one V. Krishna Murthy and others under Ex.A3. Now, the disputed land is 7,128.5 sq. yards. The possession of land to an extent of Acs.2.20 gts by Srinivasulu Naidu from 1959 to 1964 was established in O.S. No. 175 of 1970 wherein the dispute with regard to the land to an extent of 4,971.5 sq. yards out of Acs.2.27 gts between V. Krishna Murthy and others/plaintiffs with the Union of India/respondent has been decided through the judgment and decree dated 13.08.1970. The delivery of the land to an extent of Acs.2.27 gts to the Union of India by the State Government was negatived in that suit. The possession of Srinivasulu Naidu in the land on three sides of the decretal land is admitted by R.W.2 as per the contents of Ex.B21. Since the said judgment and decree in O.S. No. 175 of 1990 had attained finality in view of the dismissal of appeal being CCCA No. 30 of 1972 filed by the Union of India, the plaintiffs have proceeded for its execution. Therefore, the father of the applicants had got title and possession over the part of the land sold by him.

18. The contention of the Union of India that the entire land to an extent of Acs.2.20 gts was delivered to the Central Government as per Ex.B28 proceedings cannot be accepted as the land to an extent of Acs.2.20 gts was shown as Minature Rifle Range at Mallepally village area as per Ex.B14 and not in Shaikpet village and as such, the Special Court held that the land to an extent of Acs.2.20 gts covered by Exs.A1 and A2 belongs to Srinivasulu Naidu and they are valid documents.

19. When the execution proceedings are pending, respondent No.1 claimed 1/3rd share in the entire land covered by the decree in O.S. No.175 of 1990 as assignee from one of the decree holders i.e., V. Krishna Murthy under assignment deed dated 18.03.1992, which admittedly has not been produced before the Court. To avoid demolition of the Pension Payment Office and to avoid the contempt proceedings, the Union of India made exchange offer to five equal extent of vacant land lying adjacent to the decree schedule property though it is not its property. The Special Court observed that after exchange, an extent of 2627.87 sq. yards covered by decree shown as 'B' portion is delivered to R1 and also observed that respondent No.1 got possession of the land of Srinivasulu Naidu after exchange, his possession is illegal and unlawful."

14. The order passed by the Tribunal and that of the High Court was based on the decree in OS No. 175/1970 though the said suit was only in respect of 4971.5 sq. yards comprising in Survey No. 299/2. The plaintiffs in the aforesaid suit had pleaded that the applicants had purchased 2 acres 27 guntas of land vide two sale deeds and that the plaintiffs are purchasers of 4971.5 sq. yards.

15. Learned counsel for the appellant argued that the subject matter of the first suit was only 4971.5 sq. yards which was purchased by the plaintiffs. The issue was in respect of title of the plaintiffs over the said land alone. Though there was an issue as to whether the land belongs to Hyderabad State Army and that it has been handed over to the Union in 1958, but such issue was decided against the appellants. However, the finding on such issue would be restricted to the land which is subject matter of the suit and not the entire land which was handed over to the Union by the State of Andhra Pradesh.

16. The transfer of land by the State of Andhra Pradesh to the Union was not required to be registered by a registered instrument in view of Section 17(2)(vii) of the Registration Act, 1908, which reads as under:

"**17. Documents of which registration is compulsory.**

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

xx xx xx

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to –

xx xx xx

(vii) any grant of immovable property by Government;"

17. Section 2 of the Government Grants Act, 1895 provides that the Transfer of Property Act shall not be applicable to Government grants. Therefore, the condition in Section 54 of the Transfer of Property Act that immovable property of the value of one hundred rupees and upwards can be transferred only by a registered instrument is also not applicable to the Government Land. Section 2 reads as under:

"2. Transfer of Property Act, 1882, not to apply to Government grants. - Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to

be made by or on behalf of the Government to, or in favour of any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed."

18. It was argued that the land was transferred to the Union vide letter dated 10.10.1956 when 1650 acres and 2 guntas of land including 378 acres and 16 guntas of land of Asafnagar lines were transferred to the Government of India. Subsequently, on 24.8.1957, land measuring 150 acres 8 guntas attached to Chandrayangutta lines was excluded and the Collector was requested to make early arrangements of handing over of the land measuring 1500 acres 24 guntas to the Military Estate Officer. In pursuance of such communication, the possession of land measuring 1500 acres 24 guntas was handed over to the Union of India in the proceedings dated 19.3.1958.

19. In the communication dated 10.10.1956, as mentioned above, the State of Andhra Pradesh had transferred 1650 acres 2 guntas of land. However, later on 24.8.1957, the land measuring 150 acres and 8 guntas situated in Chandrayangutta Lines was excluded. The communication dated 10.10.1956 reads as thus:

"From:

The Chief Secretary to Government

General Administration Department

Hyderabad Deccan.

To

The Secretary to Govt. of India

Ministry of Defence,

New Delhi.

Subject:- ALLOCATION OF OLD HYDERABAD CANTONMENT LANDS BETWEEN THE DEFENCE MINISTRY AND THE STATE GOVERNMENT

Sir,

I am directed to refer to this Govt. Letter No. 1065 CAD Army dated the 9th July, 1952 addressed to the Ministry of States (Now Home Affairs Ministry) New Delhi (Copy enclosed for ready reference)

and to say that as stated therein agreement was reached between the Government of India and the Hyderabad Govt. in regard to the allocation of the late Hyderabad Army buildings and according to the agreement the following lines in the Hyderabad proper have been treated as ISF lines property of the Govt. of India.

1) Mohammadi Lines.

2) Ibrahim Bagh Lines.

3) Makai Darwaza Lines.

4) Asafnagar Lines

5) Masab Lines.

6) Chandrayangutto Lines

Similarly agreement was reached regarding the following Hyderabad Army line and building in the Hyderabad proper being treated as non-ISF lines property of the Hyderabad Govt.

1) Fateh Darwaza Lines.

2) Mallapalli Lines.

3) A.C. Guards (Saifabad) Lines.

4) Nampally Lines.

5) Central Military Hospital Building (New Sarojini Devi Hospital)

6) Banjara Darwaza Lines.

7) Band lines Fath Maidan.

8) Mysaram Lines.

As stated in the above cited letter the question of allocating the Hyderabad Cantonment lands between the two Govts has been engaging the attention of this Govt. for some time past and in order to reach an agreement between the Centre and the State for the allocation of these lands this Govt. had proposed in the letter referred to above that all lands in the vicinity of the ISF buildings or meant for the use of occupants of ISF Buildings should be treated as ISF or Central Govt. property and the rest as non-ISF property falling to the share of Hyderabad State. It was also made known to the Govt.

of India, in our above letter and DO No. 661/GAD Army 54 dated the 27th /28th Aug 54 addressed to you that this Govt. had asked their survey to carry out the survey and the demarcation of the ISF and non-ISF lands. That work has since been completed.

The State Government having examined the entire question of the demarcation of appurtenant lands carefully suggest for the acceptance of the Govt. of India the allocations as indicated in a set of maps (five in number) forwarded herewith. The appurtenant lands attached to ISF Lines are shown in green colour while the lands appurtenant to non-ISF lines are indicated in blue colour.

The recommendation of the State Govt. briefly envisages the allocation of lands as under:

	ISF Lines	Acres	Guntas
1	Mohammadi Lines	361	20
2	Ibrahimbagh Lines etd.,	484	02
3	Makai Darwaza Lines etc.,	244	08
4	Banjara Darwaza Lines	32	18

According to the agreement reached between the two Govt. Banjara Darwaza Lines. Property of the State is being exchanged for Masab lines. Property of the Centre is being exchanged vide this Govt's endorsement No. 197 GAD 21 Army 56 dated 26th June 56. Hence Masab Lines are omitted here and shown under non-ISF Lines below -Banjara Darwaza Lines are shown as ISF instead.

		Acres	Guntas
5	Asafnagar Lines	378	16
6	Chandrayangutta Lines	150	08
	Total	1650	32

	Non-ISF Lines	Acres	Guntas
1	Fateh Darwaza Lines, (Dhanka Kotah and Naurangi Maidan)	42	04
2	Malapalli Lines		
3	A.C. Guards (Saifabad) Lines	450	12
4	Nampalli Lines		

5	Central Military Hospital Building (now Sarojini Devi Hospital)		
6	Masab Lines		
7	Mysaram Lines	463	10
8	Band Lines Fateh Maidan	18	18
	Total	974	4

"From the above it will be seen that 1650 acres 32 guntas will go to the Centre and 974 acres 04 guntas fall to the share of the State.

I am to request you to kindly to communicate early concurrence of the Govt. of India to the above allocation of the ex Hyderabad Cantonment lands to the Centre and the State so that the lands falling to the share of the Govt. of India may be hand over to the local Military authorities.

An early reply will be very much appreciated.

Yours faithfully

sd/-

BHARAT CHAND DHANNA

Deputy Secretary to the Govt.

10.10.1956

ISF AND NON-ISF LANDS-HYDERABAD

I.	Langar Houz	Area	Planimeter Area	
	Indian Govt.	1. Bit excl. Polo Ground (after completion of survey from M47 to M52 submerged area	361	20
	State Govt.	TIT Bit of Dhanka Lotha	20	08
	State Govt.	II Bit Naurangi Maidan (after alternation at Stn. No.9 and excl. the boundary South of road as marked in Collector's office Plan	21	36

II.	Golconda Area Indian Govt.	I Ibrahimbagh Barracks etc.	467	28
		Septic Tank	9	02
		Kitchen Garden	7	12
		II. Makai Darwaza Lines excl. encroachment 2 and 4 as marked in the plan)	139	00
		III Area East of Golconda Tombs	104	26
			728	10
	Indian Govt.	Banzara Darwaza Lines	30	14
		Stables	2	04
			32	18
III	Mallapally Area	I Rifle Range and Parade Ground etc. as marked on the plan	372	16
		IT Military Grave Yard	3	20
		III Miniature Rifle Range	2	20
			378	16

.Sd/-

10/10/56"

20. The ISF lines are the Indian Security Forces lines whereas the non-ISF lines refer to the non-Indian Security Forces lines such as that of State of Hyderabad. The Asafnagar lines measuring 378 acres and 16 guntas is a part of ISF line. In the appendix attached to the said communication, the Asafnagar lines are shown as Mallapally area measuring 378 acres and 16 guntas. The land described as Miniature Rifle Range measuring 2 acres 20 guntas is the subject matter of the land in the present appeals. Mallapalli lines are mentioned as non-ISF lines but measures about 450 acres and 12 guntas. Thus, it is argued that in the appendix, Mallapally area is distinct from Mallapalli lines. The Mallapally area is either synonymous with Asafnagar lines or on account of mistake but has equivalent measurements with Asafnagar lines.

21. The proceedings of the Board of the Appellant with the Collector of Hyderabad in respect of delivery of possession of 1500 acres and 24 guntas as recorded in the letter dated 19.3.1958 (Ex B-14) read as thus:

"PROCEEDINGS of a Board of officers

assembled at the	OFFICE OF THE GARRISON ENGINEER, SECUNDERABAD
On the 19th March 1958 at 1000 hours.	
by order of	STATION HEADQUARTERS LETTER NO. 17729 DATED 15TH Jan, 1958
for the purpose of	TAKING OVER OF EX-STATE FORCES LANDS IN HYDERABAD ACCRUING TO THE SHARE OF THE ARMY

PRESIDING OFFICER

Brigadier G.S. BAL -	Station Commander
MEMBERS	
1. Major W.S. Rasalam -	DAA & QMG HQ SECUNDERABAD Station
2. Shri H.S. GUNDAPPA	Rep. M.E.S. Garrison Engineer
3. Shri D.D. ANAND	Rep. ML & C MEO SECUNDERABAD
4. SHRI RAMASWAMY NAIDU	Rep. of the Collector of HYDERABAD

The Board having assembled pursuant to order, proceeded to ascertain from the Land Records, the details of the Property to be taken over and its location and boundary. The Collector's Representative Mr. Ramaswamy Naidu furnished the followed information regarding this from the Land Records, though the extent of the land to be taken over by the Central Government is not finalized.

(a) According to the Government of India letter No. 70732/ Q3(Plg)VOL-II/18-S/Q/D(QTD) & LHD dated 11th March 1957 to the Secretary to the Government of Andhra Pradesh General Administration (Military Department) Hyderabad, 1650 acres and 32 guntas of lands appurtenant to Asaf Nagar Lines, Mohammadi Lines, Ibrahim Bagh Lines, Makkai Darwaza Lines, Banzara Darwaza Lines as per Annexure "A" are to be taken over by the Army authorities. The details of the above area is contained in the enclosures to the State Government letter No. 392 GAD 23rd Army 56 dated 10th Oct 56 which is enclosed as Annexure "B".

(b) Subsequently vide GAD Memorandum No.2733/57-2 dated 24th Aug 57 addressed to the Collector and copies to the Military Estates Officer, Administrative Commandant, Station Headquarters, Secunderabad and the Board of Revenue appended as Annexure "C" an extent of lands measuring 150 acres and 8 guntas appurtenant to Chandrayan Gutta Lines should be deducted from 1650 acres 32 guntas and the rest of the land i.e. 1500 acres and 24 guntas alone are to be handed over to the Military authorities. This is to be confirmed by Army Headquarters. In pursuance of this, the following areas are to be taken over by the military authorities:-

	Acres	Guntas
1) Mohamadi Lines measuring	361	20
2) Ibhahimbagh Lines measuring	484	2
3) Makkai Darwaza Lines measuring	244	8
4) Banjara Darwaza Lines measuring	32	18
5) Asafnagar Lines measuring	378	16
Total	1500	24

2. The Plans for the above are enclosed as Annexure "D", "E", "F". The areas have been traversed by the State Settlement Department and stone pillars have also been fixed on the ground. Those have been physically verified by the Board at the sites. At present the boundary stones are marked with tar temporarily. Those are to be permanently engraved.

3. The Board observed during its physical verifications on the ground that there are several encroachments in all the Lines, which are taken over. These encroachments are as furnished by the Collector 'Land' Acquisition Hyderabad in his letter No. RC-CIO/1522/Hyd/58 dated 9th May, 58. Vide annexure. The Board observed that the encroachments are in the nature of both built up areas (permanent and temporary) and cultivated areas. The board was informed by the Collector's Representative that some areas of land falling within the boundary limits of the lands being taken over by the Army authorities have been leased out by the Civil authorities for agriculture, grazing and other commercial purposes. A list of such leases with details and terms of those leases, as furnished by the Collector's Representative is attached as Annexure "H".

4. Though the buildings in Banjara Darwaza Lines, have not yet been handed over by the State P.W.D, being still in occupation by the H.S.R.P. units, the lands appurtenant thereto, as per the above schedule is taken over.

5. During the physical verification and taking over of lands at site, the Board observed the following:-

   (a) Asafnagar Lines

      i) The demarcation line between Sarojini Devi Hospital and Asafnagar Line requires to be re-marked by fixing additional boundary stones from boundary pillars No.46 to 113 by the State authorities. Action is in hand.

      ii) The State's Government representative Shri. Ramaswamy Naidu stated that an enclave between pillars 76 to 100 including Asafnagar pumping station and building known as Hussain Gulshan and adjoining cultivated area, comprising of a total acreage of 44 is not now to be handed over and incorrectly computed in the area of 378 acres and 16 guntas, mentioned at item (b) of para 1 above, as this comprises of State Government property (Asafnagar Water Works) and private property.

(b) xxx xxx

(c)

(d)

(e) Ibrahimbagh Lines

The boundary pillars exist as per the plan.

6. Regarding the recommendation of the areas for the active use of the Army (units in occupation), their future use and surplus land is being ascertained from the user units with a view to determine the surpluses for handing over to the Military Estates Officer.

Presiding Officer -Sd/-

Members 1. Sd/-

2. Sd/-

3. Sd/-

4. Sd/-

22. It is further argued that such land is recorded in possession of the appellant in the military land register and general land register which are public documents within the meaning of Section 74 of the Evidence Act, 1872. Still further, the Court may presume the existence of any fact which it thinks is likely to have happened, regard being given to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case such as (e) that the judicial and official acts have been regularly performed and (f) that the common course of business has been followed in particular cases. Thus, the documents maintained in the course of official duty would carry the presumption of correctness on the basis of which the Union cannot be said to be land grabber, which has entitled the applicants to invoke the jurisdiction of the Tribunal. The Union has unequivocal title over the land in question. Though, in the first suit, the Union was unsuccessful but the findings in the said suit would be restricted to land which is subject matter of the said suit and not to the entire land.

23. On the other hand, Mr. Rao argued that the land in question is Sarf-e-Khas land i.e. crown land of the State of Hyderabad belonging to Nizam family. Shaik Ahmed, the seller of the land to the predecessor

of the applicants was the holder of Patta under the Nizam. Such Patta is a document of title and therefore, a valid title was passed on to the predecessor of the applicants vide registered sale deed dated 12.12.1959. It was also argued that the decree in the first suit is in respect of entire property purchased by predecessor of the applicants, though the claim of plaintiffs was restricted to the land purchased by him. Therefore, such decree would operate as *res judicata.* Reliance was placed upon a judgment reported as ***K. Ethirajan (Dead) by LRs.*** v. ***Lakshmi & Ors.***[5]wherein it has been held that where the issues directly and substantially involved between the same parties in the previous and subsequent suit are same, though in the previous suit, only part of the property was involved while in the subsequent suit, the whole of the property was the subject matter, the principle of *res judicata* would be applicable. It was also argued that the act of any person of land grabbing falls within the scope of the Act and the appellants are also persons within the meaning of Section 2(g) of the Act. Therefore, the proceedings initiated before the Tribunal were valid and have been rightly decided.

24. We have heard learned counsel for the parties. The following questions are required to be decided in the present appeals.

(i) whether the order passed in the first suit filed by the plaintiffs as affirmed by the High Court operates as *res judicata*?

(ii) whether the appellants have proved their title over the land in question?

(iii) whether the appellant is a land grabber within the meaning of Section 2(d) of the Act?

25. The applicants have claimed possession from the appellants primarily on the ground that in the suit filed by the plaintiffs on 14.4.1965, the basis of the suit was purchase of land by the plaintiffs from the father of the applicants. Since the plaintiffs have been found to be the owners on the basis of purchase of land from the father of the applicants, therefore, the issue of title decided in the said suit would operate as *res judicata*. Therefore, the appellants herein are land grabbers having no title over the land in question. It may be reiterated that

5 (2003) 10 SCC 578

the plaintiffs had purchased land measuring 4971.5 sq. yards from the father of the applicants whereas the remaining land measuring 7128.5 sq. yards was retained by the applicants. Therefore, the decree in the first suit was only in respect of the schedule property in the first suit i.e. 4971.5 sq. yards. The patta, the basis of title of the applicants had not been produced in evidence before the Tribunal. Thus, the basic document of title had not been produced.

26. In the first suit, the father of the applicants had not filed any counter claim to assert title or possession over the land in question. The land admeasuring 4971.5 sq. yards was a schedule property and the subject matter of the first suit. The issue no. 1 in the first suit was in respect of the possession of the plaintiffs and their predecessor-in-interest over the *'suit land'* within 12 years prior to the suit. Therefore, the rights of the plaintiffs were examined in respect of such suit land measuring 4971.5 sq. yards alone, although, to return the finding on possession and title, possession of the father of the applicants over the land purchased by the Plaintiff was clubbed together on the basis of patta claimed to be granted to Shaik Ahmed, though not produced or proved on record.

27. In the second suit filed by the applicants, the entire basis of suit was the findings returned in the first suit. There is no independent evidence produced in respect of purchase of land by Shaik Ahmed and the legality or validity of Patta issued to him. Although, applicants have asserted that they have been visiting the land in question to verify their possession but apart from such plea, there is no evidence that there was any covert and overt act on the part of the plaintiffs to assert possession over the land in question.

28. In fact, the appellants had entered into a settlement with the plaintiffs by which some of the land in possession was given to the decree holder in execution with the leave of the Court on 19.8.1995. Such action would show the assertion of title by the appellants so as to enter into exchange of land in satisfaction of the decree. The father of the applicants was party in the execution proceedings but has not objected to the exchange. It necessarily leads to an inference that the father of the applicants was not in possession and has not asserted the title or possession over the remaining land measuring 7128.5 sq. yards. On the other hand, the appellants have categorically asserted

that they are in possession of the land from the date of transfer in the year 1958 when the Collector of Hyderabad handed over the possession to them. The appellants continued to be in unhanded possession over the last 30 years.

29. To examine the arguments that the decree in the previous suit would operate as *res judicata*, Section 11 CPC may be extracted:

"11. Res Judicata. – No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

30. The plea of *res judicata* is generally raised against the plaintiffs who would be the applicants before the Tribunal. This Court in a judgment reported as ***Alka Gupta*** v. ***Narender Kumar Gupta***[6] held that the plea of *res judicata* is a restraint on the right of a plaintiff to have an adjudication of his claim. This Court has culled down the essential requirements to be fulfilled to apply the bar of *res judicata* to any suit or issue. It has been observed as under:

6 (2010) 10 SCC 141

"20. Plea of res judicata is a restraint on the right of a plaintiff to have an adjudication of his claim. The plea must be clearly established, more particularly where the bar sought is on the basis of constructive res judicata. The plaintiff who is sought to be prevented by the bar of constructive res judicata should have notice about the plea and have an opportunity to put forth his contentions against the same. In this case, there was no plea of constructive res judicata, nor had the appellant-plaintiff an opportunity to meet the case based on such plea.

21. Res judicata means "a thing adjudicated", that is, an issue that is finally settled by judicial decision. The Code deals with res judicata in Section 11, relevant portion of which is extracted below (excluding Explanations I to VIII):

"11. *Res judicata*.— xxxx xxxx

22. Section 11 of the Code, on an analysis requires the following essential requirements to be fulfilled, to apply the bar of res judicata to any suit or issue:

(*i*) The matter must be directly and substantially in issue in the former suit and in the later suit.

(*ii*) The prior suit should be between the same parties or persons claiming under them.

(*iii*) Parties should have litigated under the same title in the earlier suit.

(*iv*) The matter in issue in the subsequent suit must have been heard and finally decided in the first suit.

(*v*) The court trying the former suit must have been competent to try the particular issue in question."

31. The rule of *res judicata* is founded on considerations of public policy that the finality should be attached to the binding decisions pronounced by the Courts of competent jurisdiction. This Court in ***Daryao & Ors.*** v. ***State of U.P. & Ors.***[7] held as under:

"9. …Now, the rule of res judicata as indicated in Section 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be

7 AIR 1961 SC 1457

technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32."

32. In a judgment reported as ***State of Karnataka & Anr.*** v. ***All India Manufacturers Organisation & Ors.***[8], this Court has considered Explanations III & IV of Section 11 CPC. It was held as under:

"32. *Res judicata* is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim *nemo debet bis vexari pro una et eadem causa* (no one ought to be twice vexed for one and the same cause [P. Ramanatha Aiyer: *Advanced Law Lexicon*, (Vol. 3, 3rd Edn., 2005) at p. 3170]) and second, public policy that there ought to be an end to the same litigation [Mulla: *Code of Civil Procedure*, (Vol. 1, 15th Edn., 1995) at p. 94] . It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "CPC") is not the foundation of the principle of *res judicata*, but merely statutory recognition thereof and hence, the section is not to be considered exhaustive of the general principle of law [*See Kalipada De* v. *Dwijapada Das*, (1929-1930) 57 IA 24 : AIR 1930 PC 22 at p. 23] . The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to reagitate the matter again and again. Section 11 CPC recognises this principle and forbids a court from trying any suit or issue, which is *res judicata*, recognising both "cause of action estoppel" and "issue estoppel". There are two issues that we need to consider, one, whether the doctrine of *res judicata*, as a matter of principle, can be applied to public interest litigations and second, whether the issues and findings in *Somashekar Reddy* [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] constitute *res judicata* for the present litigation.

xx xx xx

8 (2006) 4 SCC 683

36. We will presently consider whether the issues and findings in *Somashekar Reddy* [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] *actually* constitute *res judicata* for the present litigation. Section 11 CPC undoubtedly provides that only those matters that were "directly and substantially in issue" in the previous proceeding will constitute *res judicata* in the subsequent proceeding. Explanation III to Section 11 provides that for an issue to be *res judicata* it should have been raised by one party and expressly denied by the other:

xx xx xx

41. With these legal principles in mind, the question, therefore, arises as to what exactly was sought in *Somashekar Reddy* [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] , how it was decided by the High Court in the first round of litigation, and what has been sought in the present litigation arising at the instance of Mr J.C. Madhuswamy and others. In order to show that the issue of excess land was "directly and substantially in issue" in *Somashekar Reddy* [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] we will first examine the prayers of the parties, the cause of action, the averments of parties and the findings of the High Court in *Somashekar Reddy* [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] ."

33. The issue can be examined from another angle as to whether the plea of *res judicata* can be raised by the applicants against their co-defendant in the first suit. In the first suit, the defendant had the opportunity to raise a claim in respect of land measuring 7128.5 sq. yards. However, no such claim was raised. In view of Section 11, Explanation IV CPC, the applicants might and ought to have made grounds of defence in the former suit to claim possession of the land measuring 7128.5 sq. yards. The consequence would be that failure to raise such defence or counter claim would be deemed to be constructive *res judicata* in terms of Explanation IV of Section 11 CPC. Reference may be made to judgment of this Court reported as ***Ramadhar Shrivas*** v. ***Bhagwandas***[9]. This court was examining a situation where in a suit for possession, the defendant Bhagwandas was found to be the tenant of the original owner Hiralal and after a subsequent purchase, he had become tenant of Ramadhar. The first

9 (2005) 13 SCC 1

suit was dismissed on the ground that suit for possession was not maintainable against Bhagwandas being tenant. In another suit filed by the purchaser, the defendant denied the title of plaintiff, though such was not the plea in the first suit. In these circumstances, the Court held as under:

"23. In the case on hand, it is clear that in the earlier suit, the court had recorded a clear finding that the defendant Bhagwandas was neither the owner of the property nor could he show any right as to how he was occupying such property except as a tenant of Hiralal. If Bhagwandas was claiming to be in lawful possession in any capacity other than a tenant, he ought to have put forward such claim as a ground of defence in those proceedings. He ought to have put forward such claim under Explanation IV to Section 11 of the Code but he had failed to do so. The doctrine of constructive res judicata engrafted in Explanation IV to Section 11 of the Code thus applies to the facts of the case and the defendant in the present suit cannot take a contention which ought to have been taken by him in the previous suit and was not taken by him. Explanation IV to Section 11 of the Code is clearly attracted and the defendant Bhagwandas can be prevented from taking such contention in the present proceedings."

34. The issue as to whether there can be *res judicata* between co-defendants was first examined by the Privy Council in a judgment reported as ***Munni Bibi (since deceased) & Anr.*** v. ***Tirloki Nath & Ors.***[10]. The three principles of res judicata as between co-defendants were delineated as: (1) There must be a conflict of interest between the defendants; (2) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims; (3) the question between the defendants must have been finally decided. This test too is not satisfied as in order to grant relief of possession to the plaintiffs in the first suit, it was not necessary to decide the issue of the remaining land between the father of the applicants and the appellants. The said principle was reiterated by this Court in a judgment reported as ***Mahboob Sahab*** v. ***Syed Ismail and Others***[11] wherein it has been held as under:

10 AIR 1931 PC 114
11 (1995) 3 SCC 693

"8. Under these circumstances the question emerges whether the High Court was right in reversing the appellate decree on the doctrine of res judicata. At this juncture it may be relevant to mention that the trial court negatived the plea of res judicata as a preliminary issue. Though it was open to sustain the trial court decree on the basis of the doctrine of res judicata, it was not argued before the appellate court on its basis. Thereby the findings of the trial court that the decree in OS No. 3/1/1951 does not operate as res judicata became final. The question then is whether the doctrine of res judicata stands attracted to the facts in this case. It is true that under Section 11 CPC when the matter has been directly or substantially in issue in a former suit between the same parties or between parties under whom they or any of them claimed, litigating under the same title, the decree in the former suit would be res judicata between the plaintiff and the defendant or as between the co-plaintiffs or co-defendants…"

35. In a recent judgment reported as ***Govindammal (Dead) by LRs & Ors.*** v. ***Vaidiyanathan & Ors.***[12], the applicability of *res judicata* between co-defendants was examined. The applicants were the defendants in the first suit and so were the appellants. In the aforesaid case, the suit was filed by the respondents claiming title over A Schedule property or in the alternative for partition of half share in B Schedule property. The Court considered the principle of *res judicata* within the co-defendants in para 14 which reads as under:

"14. However, there exist certain situations in which the principles of res judicata may apply as between co-defendants. This has been recognised by the English courts as well as our courts for more than a century. The requisite conditions to apply the principle of res judicata as between co-defendants are that (*a*) there must be conflict of interest between the defendants concerned, (*b*) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims, and (*c*) the question between the defendants must have been finally decided. All the three requisite conditions are absent in the matter on hand. Firstly, there was no conflict of interest between the defendants in the suits filed by the temple and the school. Secondly, since there was no conflict, it was not necessary to decide any conflict between the defendants in those suits in order

12 (2019) 17 SCC 433

to give relief to the temple or the school, which were the plaintiffs. On the other hand, the father of the plaintiffs and the father of the defendant were colluding in those suits filed by temple and school. Both of them unitedly opposed those suits. In view of the same, the principles of res judicata would not apply."

36. The applicants have not claimed any title to the land which is claimed to be in their possession and the subject matter of the first suit was only 4971.5 sq. yards. Hence, the decree in the said suit is binding *qua* the land in suit only.

37. Though the first suit is between the same parties, but the subject matter is not the same. For *res judicata* to apply, the matter in the former suit must have been alleged by one party and either denied or admitted, expressly or impliedly by the other. Since the issue in the suit was restricted to 4971.5 sq. yards, the decree would be binding *qua* to that extent only. The issue cannot be said to be barred by constructive *res judicata* as per Explanation IV as it applies to the plaintiff in a later suit. The appellants have denied the claim of the plaintiffs in the first suit to the extent that it was the subject matter of that suit alone. Therefore, the decree in the first suit will not operate as *res judicata* in the subsequent matters.

38. The reliance of Mr. Rao on the judgment of this Court in ***K. Ethirajan*** is not tenable. In fact, such judgment has been made the basis of the impugned orders as well. The reliance is on para 20 of the judgment, which reads as under:

"20. The argument that principle of res judicata cannot apply because in the previous suit only a part of the property was involved when in the subsequent suit the whole property is the subject-matter cannot be accepted. The principle of res judicata under Section 11 of the Civil Procedure Code is attracted where issues directly and substantially involved between the same parties in the previous and subsequent suit are the same - may be - in the previous suit only a part of the property was involved when in the subsequent suit, the whole property is the subject-matter."

40. The said paragraph cannot be read in isolation. The facts on the basis of which judgment is given are required to be kept in view to have an understanding of the background in which such observation has been recorded. One line or paragraph cannot be picked up without going

through the facts and the nature of suit. In the first suit, deceased-M. Gurunathan sought eviction of deceased-K. Ethirajan, (plaintiff in the second suit), from a portion of the suit property by claiming exclusive title. The trial court in the said suit held that the deceased-K. Ethirajan cannot be held to be in possession of the suit property as a mere licensee of the deceased-M. Gurunathan. He was held to be in possession of the suit property as owner since 1940 as evidenced by various documents of possession filed by him and the joint patta granted by the authorities under the Act of 1948. The trial court also held that deceased-K. Ethirajan having remained in continuous possession of the suit property as owner had perfected his title by remaining in adverse possession for more than the statutory period of 12 years.

40. K. Ethirajan (plaintiff in the second suit), claimed partition of the land based on joint patta granted to the Plaintiff and the deceased-defendant M. Gurunathan. It is on the basis of this joint patta, the suit for partition filed by the plaintiff was decreed by the trial court as well as by the First Appellate Court. This Court found that the issue directly and substantially involved in the first suit was to claim exclusive ownership of deceased-M. Gurunathan to the whole property left behind by deceased-Gangammal, although eviction was sought of the defendant from a particular portion of the land on which he had built a hut for residence. The claim of ownership over the entire property was specially raised in the first suit. The findings in para 20 were returned in these circumstances. It was thus in this background, this Court held that the principle of *res judicata* would apply as in the previous suit, the assertion was in respect of whole property but possession was sought from a smaller area. The judgment is clearly not applicable in the present case as the title over the land in question before the Tribunal is distinct from the land which was the subject matter in the first suit. The first suit was only in respect of the land purchased by the Plaintiff and not the entire land, though his claim was based on sale by the father of the applicants.

41. Now, the second question as to whether the appellants have proved their title over the land in question is examined. The appellants claim title over the land in question. Since the land is transferred from the State, document of title is not required to be registered in terms of Section 17 of the Registration Act, 1908 and/or in terms of

Government Grants Act, 1895. The area of Asafnagar lines is 378 acres 16 guntas. In the appendix to the letter dated 10.10.1956, the details of the land comprising in the area measuring 378 acres 16 guntas is mentioned, which includes 2 acres 20 guntas of Miniature Rifle Range. Such land is reflected as in a Mallapally Area. The total area of Mallapally area and Asafnagar Lines is 378 acres and 16 guntas. The Mallapalli Lines is non-ISF Lines measuring 450 acres and 12 guntas which is distinct from Asafnagar Lines falling in ISF area measuring 378 acres and 16 guntas. Thus, Mallapally area and Mallapalli Lines are two different parcels of the land. The land in question herein is part of Asafnagar Lines handed over to the appellants as ISF Lines. The letter dated 19.3.1958 completes the transfer when the possession of land measuring 1500 acres and 24 guntas was handed over to the Union.

42. The appellants claim to be in possession over the land measuring 1500 acres and 24 guntas from the year 1958. Although, the appellants have lost claim in respect of land measuring 4971.5 sq. yards which is falling as part of 2 acres and 20 guntas of land, but that would not lead to losing of the title of the appellants over the entire land measuring 2 acres and 20 guntas.

43. Therefore, by virtue of the provisions of Government Grants Act, 1895 read with Section 17(2)(vii) of the Registration Act, 1908, transfer of land to the appellant is complete. The appellant is the owner of the aforesaid land. The applicants have not produced any document regarding the patta in favour of Shaik Ahmed. They have not proved the title of their vendor so as to claim a rightful title over the land in question. Further, no patta could be granted to the applicants as the land was transferred by the State in their favour on 19.3.1958 and possession was claimed on the strength of sale deeds executed on 12.12.1959.

44. Apart from the fact that the transfer of title in favour of the Union is complete when the possession was delivered, but even thereafter, the military land register and general land register produced by the appellants show the possession of the appellants over such land. The military land register and general land register are public documents within the meaning of Section 74 of the Indian Evidence Act, 1872 (Evidence Act) containing the records of the acts of the sovereign

authority i.e., the Union as well as official body. Still further, Section 114 of the Evidence Act grants presumption of correctness being an official act having been regularly performed. Therefore, in the absence of any evidence to show that such records were not maintained properly, the official record containing entries of ownership and possession would carry the presumption of correctness. In view of the transfer of land on 10.10.1956 followed by delivery of possession on 19.3.1958 and continuous assertion of possession thereof, it leads to the unequivocal finding that appellants are owners and in possession of the suit land.

45. The third question is to examine whether the appellants are land grabbers and the Tribunal has jurisdiction to entertain a petition under the Act. The objection of the appellants that they are not land grabbers and that the State Legislature will have no jurisdiction over the property of the Union need not to be examined in view of the finding that the appellants are in fact owners of the land in question.

Thus, Civil Appeal No. 2049 of 2013 is allowed and the application filed by the applicants before the Tribunal is hereby dismissed. In view thereof, Civil Appeal No. 13 of 2012 is rendered infructuous and accordingly dismissed.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal disposed of.