

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.5038 OF 1997@@
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P NAGA KUMARI ... APPELLANT(S)

VERSUS

SPL COURT UNDER AP LAND GRABBING ACT & ORS. ... RESPONDENT(S)

(With office report)

Date: 30/11/2000. This/These matter(s) were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE SYED SHAL MOHAMMED QUADRI
HON'BLE MR. JUSTICE S.N. PHUKAN

For the Appellant(s) Mr. M.N. Rao, Sr. Adv.
Mr. K. Maruthi Rao, Adv.
Mrs. K. Radha, Adv.
Mr. Ajit, Adv.
Mrs. S. Usha Reddy, Adv.

For the Respondent (s) Mr. Venkat Reddy, Adv. for
Mr. AK. Tandale, Adv.
Mr. D. Rama Krishna Reddy, Adv.
Mrs. D. Bharathi Reddy, Adv.

UPON hearing counsel the Court made the following
O R D E R

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The appeal is allowed with no order as to costs.

.SP1

(S.Thapar) (Kanwal Singh)@@
AA
PS to Registrar Court Master@@
AA

The signed order is placed on the file.

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.PL56

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5038 OF 1997@@

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P. Naga Kumari

Appellant (s)

Versus

Spl. Court under A.P. Land Grabbing Act & Ors.

Respondent (s)

O R D E R@@

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This appeal is from the order of the High Court of Andhra Pradesh at Hyderabad in Writ Petition No.20616 of 1996. By the impugned order the High Court has set aside the order of the Special Court under the Land Grabbing (Prohibition) Act, 1982 in L.G.C. Case No.164/94 dated August 5, 1996. The appellant in this Court is the owner of Plot No.60 in S.No.41/1 and 474 of Malkajgiri Mandal, R.R. District, Hyderabad.

This dispute relates to encroachment of land of the appellant by respondents 2 and 3. Here we are concerned with three plots, namely, Plot Nos.58, 59 and 60. According to the sale deed the owner of Plot No.58 purchased an extent of 316.25 square yards; owner of Plot No.59 purchased an extent of 340.75 square yards and owner of Plot No.60 purchased 460 square yards. A complaint was lodged by filing L.G.C.Case

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No.164/94 by the owner of Plot No.60 - appellant herein stating that an extent of 53 square yards of his land has been encroached upon by respondents 2 and 3, owners of Plot Nos. 59 and 58. An advocate Commissioner was appointed by the Special Court to inspect and measure the areas of plots in dispute with the help of a surveyor and submit his report. He accordingly got the said plots surveyed, measured and delineated on a plan. He filed his report with the Plan marked as Exhibit C-25. On consideration of the evidence placed before it and the report of the Commissioner, the Special Court found that the owner of Plot No.58 was having an excess land of extent of 89 square yards of which 45 square yards were part of Plot No.59. It is also noted in the report that owner of Plot No.59 is having 349 square yards of which 1 square yard is not accounted for but it was stated that there was an excess of 8 square yards in plot No.59. Insofar as Plot No.60 is concerned, it was found, on measurement that the area of the plot was less by 53 square yards. On 5.8.96 the Tribunal held that an extent of 45 square yards which was encroached upon by the owner of Plot No.58, be given back to the owner of Plot No.59. In that event the area of plot No.

59 would become $348+45 = 393$ square yards. He has a sale deed for an extent of 340 square yards only and the excess land of 53

square yards will have to be given to owner of Plot No.60 which would make up the area of his plot to 460 square yards which is an extent which he purchased under the sale deed.

Dissatisfied with that order of the Special Court, the owner of Plot No.59 filed the afore-mentioned writ petition in the High Court. The High Court set aside the order of the Tribunal on two grounds. The first is that the Limitation Act applies to the facts of the case and owner of Plot No.59, the Writ Petitioner before the High Court, has been in adverse possession of the land which is part of Plot No.60 and perfected his title by adverse possession against the true owner and, therefore, the Tribunal ought not to have ordered restoration of the land against the Writ Petitioner. We think the interference by the High Court on this ground is wholly unjustifiable for the simple reason that the plea of adverse possession is a mixed question of fact and law and no plea to that effect was taken before the Special Court. Therefore, the High Court ought not to have entertained the plea much less it should have given effect to it.

The second ground on which the High Court interfered may be noted here:

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"That apart, the Commissioner's report only showed the owner of Plot No.58,

Respondent No.3, to have encroached 45 sq.yards in Plot No.59 but did not show the petitioner to have encroached any land upon plot No.60. The report did not say that the excess 9 sq. yards found in Plot No.59 of which 1 sq.yards was of others, was an encroachment upon plot No.60. To whom the excess 8 sq.yards belonged and where is that 8 sq.yards was not specified in the report. It could not be axiomatically concluded that 45 sq. yards plus 8 sq.yards found in excess in Plot No.59, altogether making 53 sq.yards, had been encroached upon by the owner of Plot No.59 on Plot No.60."

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On a perusal of the extract of the judgment of the High Court, it is clear that the High court has proceeded on an erroneous appreciation of the Commissioner's Report. If owner of Plot No.58, as is found by the Commissioner, has in his possession an extent of 45 square yards of land which legitimately forms part of Plot No.59 then that should be added to the existing area of the said Plot No.59. So calculated, it would come to $348+45=393$. The extent of plot No.59 is admittedly 340 square yards. He is not entitled to retain anything more than that. The excess of 53 square yards is the land which belongs to the owner of Plot No.60 and that

is the extent which is falling short on measuring plot No.60. Indeed a perusal of the plan Exhibit C-25 shows that that area forms part of plot No.60. In this view of the matter, we are unable to sustain the order of the High Court under challenge, which is accordingly set aside. The order of the Special Court dated August 5, 1996 is restored.

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The appeal is accordingly allowed. Inasmuch as, the third respondent is not represented, we do not consider it appropriate to award the cost of this appeal.

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(Syed Shah Mohammed Quadri)

New Delhi,
November 30, 2000

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(S.N. Phukan)