

Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987

16 of 1987

[20 February 1987]

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Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987

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An Act to amend the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Thirty-Eighth Year of the Republic of India as follows:- * Received the assent of the President on the 14th February, 1987. For Statement of Objects and Reasons, please see the Andhra Pradesh Gazette, Part IV-A Extraordinary, dated the 9th January, 1987 at pages 30 & 31.

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987.
- (2) It extends to the whole of the State of Andhra Pradesh.

(3) It shall be deemed to have come into force on the 18th September, 1986.

2. Amendment Of Section 1 :-

In the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982(Act 12 of 1982) (hereinafter referred to as the principal Act), in section 1, for sub-section (3), the following sub-sections shall be substituted, namely:--

(3) It applies to all lands situated within the limits of urban agglomeration as defined in clause (n) of section 2 of the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976) and a municipality.

(3-A) It applies also to any other lands situated in such other areas as the Government may having due regard to the urbanisable nature of the land, by notification, apply.

3. Amendment Of Section 2 :-

In section 2 of the principal Act,--

(i) clause (a) shall be omitted;

(ii) after clause (c), the following clause shall be inserted, namely:--
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"(cc) land belonging to a private person means any land belonging to,--

(i) an evacuee;

(ii) a military personnel; or

(iii) any other private individual;

The value or the extent of which or the nature of the evil involved shall be of substantial nature or in the interest of justice required;"

(iii) for clause (i), the following clauses shall be substituted, namely:--

"(1) Schedule means a Schedule appended to this Act;

(i-a). Special Court means a Special Court constituted under section 7;

(i-b) Special Tribunal means a Court of the District Judge having jurisdiction over the area concerned and includes Chief Judge, City Civil Court, Hyderabad".

4. Amendment Of Section 7 :-

In section 7 of the principal Act,--

(i) in sub-section (1), for the words "as many Special Courts as

may be necessary for such area or areas as may be specified in the notification", the words "a Special Court" shall be substituted;

(ii) in sub-section (2), for the words "not more than two other members", the words "four other members" shall be substituted;

(iii) for sub-section (3), the following sub-section shall be substituted namely:--

"(3) The Chairman shall be a person who was a Chief Justice of a High Court or a Judge of the Supreme Court and of the other four members, two shall be persons who are or have been judges of a High Court (hereinafter referred to as Judicial Members) and the other two members shall be persons who are or have been members of the Indian Administrative Service holding or have held a post not below the rank of Secretary to Government with special knowledge or experience in revenue matters (hereinafter referred to as Revenue Members):

Provided that the appointment of a person who was a Chief Justice of a High Court as the Chairman or a Judge of a High. Court as a member of the Special Court shall be made after consultation with the Chief Justice of the High Court concerned:

Provided further that where a sitting Judge of a High Court is to be appointed as a member, such appointment shall be made after nomination by the Chief Justice of the High Court concerned, with the concurrence of the Chief Justice of India.

(iv) in sub-section (4), for the words "any Special Court", the words "the Special Court" shall be substituted;

(v) after sub-section (4), the following subsections shall be inserted, namely:--

"(4A) The Chairman or other member shall hold office as such for a term of two years from the date on which he enters upon his office, or until the Special Court is re-constituted or abolished under sub-section (4), whichever is earlier.

(4B) (a) Subject to the other provisions of this Act, the jurisdiction, powers and authority of the Special Court may be exercised by benches thereof one comprising of the Chairman, a judicial member and a Revenue member and the other comprising of a judicial Member and a Revenue Member.

(b) Where the bench comprises of the Chairman, he shall be the Presiding Officer of such a bench and where the bench consists of two members, the Judicial member shall be the Presiding Officer.

(c) It shall be competent for the Chairman either suo motu or on a reference made to him to withdraw any case pending before the bench comprising of two members and dispose of the same or to

transfer any case from one bench to another bench in the interest of justice.

(d) Where it is reasonably apprehended that the trial of civil liability of a person accused of an offence under this Act, is likely to take considerable time, it shall be competent for the Chairman to entrust the trial of the criminal liability of such offender to another bench in the interest of speedy disposal of the case.

(e) Where a case under this Act is heard by a bench consisting of two members and the members thereof are divided in opinion, the case with their opinions shall be laid before another judicial member or the Chairman and that member or Chairman, as the case may be after such hearing as he thinks fit, shall deliver his opinion and the decision or order shall follow that opinion."

(vi) for sub-section (5), the following subsections shall be substituted, namely:--

"(5) The quorum to constitute a meeting of any bench of the Special Court shall be two.

(5A) The Special Court may, by notification, make regulations not inconsistent with the provisions of this Act or the rules made thereunder relating to the procedure to be followed for the conduct of the cases and for regulating the manner of taking decisions.

(5B) The Special Court may cause a public notice of the substance of such regulations for the information of the general public.

(5C) Every regulation made under this section shall, immediately after it is made, be laid before the Legislative Assembly of the State if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modifications in the regulation or in the annulment of the regulation, the regulation shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

(5D) (i) Notwithstanding anything in the Code of Civil Procedure, 1908 (Central Act 5 of 1908), the Special Court may follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play and subject to the other provisions of this Act and of any rules made thereunder while deciding the Civil

liability.

(ii) Notwithstanding anything contained in section 260 or section 262 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), every offence punishable under this Act shall be tried in a summary way and the provisions of section 263 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial.

(iii) When a person is convicted of an offence of land grabbing attended by criminal force or show of force or by criminal intimidation, and it appears to the Special Court that, by such force or show of force or intimidation the land of any person has been grabbed, the Special Court may if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property."

(vii) in sub-section (6), for the words "any Special Court", the words "the Special Court" shall be substituted.

5. Insertion Of New Section 7-A :-

After section 7 of the principal Act, the following section shall be inserted, namely:--

7-A. Special Tribunals and its powers, etc--

(1) Every Special Tribunal shall have power to try all cases not taken cognizance of by the Special Court relating to any alleged act of land grabbing, or with respect to the ownership and title to, or lawful possession of the land grabbed whether before or after the commencement of the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987 and brought before it and pass such orders (including orders by way of interim directions) as it deems fit:

Provided that if, in the opinion of the Special Tribunal, any case brought before it is prima facie frivolous or vexatious, it shall reject the same without any further enquiry:

Provided further that if in the opinion of the Special Tribunal any case brought before it is a fit case to be tried by the Special Court it may for reasons to be recorded by it transfer the case to the Special Court for its decision in the matter.

(2) Save as otherwise provided in this Act, a Special Tribunal shall, in the trial of cases before it, follow the procedure prescribed in the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(3) An appeal shall lie, from any judgment or order not being interlocutory order of the Special Tribunal, to the Special Court on

any question of law or of fact. Every appeal under this sub-section shall be preferred within a period of sixty days from the date of Judgment or order of the Special Tribunal:

Provided that the Special Court may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of sixty days.

(4) Every finding of the Special Tribunal with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing, and of the persons who committed such land grabbing and every judgment of the Special Tribunal with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land:

Provided that the Special Tribunal shall by notification specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Tribunal from any person including the custodian of evacuee property within the period specified therein will be considered by it:

Provided further that where the custodian of evacuee property objects to the Special Tribunal taking cognizance of the case, the Special Tribunal shall not proceed further with the case in regard to such property:

Provided also that the Special Tribunal shall cause a notice of taking cognizance of the case under the Act served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land.

(5) It shall be lawful for the Special Tribunal to pass an order in any case decided by it, awarding compensation in terms of money for wrongful possession, which shall not be less than an amount equivalent to the market value of the land grabbed as on the date of the order, and profits accrued from the land payable by the land grabber to the owner of the grabbed land and may direct the re-delivery of the grabbed land to its rightful owner. The amount of compensation and profits so awarded and cost of re-delivery, if any, shall be recovered as an arrear of land revenue if the Government are the owner or as a decree of a Civil Court, in any other case:

Provided that the Special Tribunal shall, before passing an order under this sub-section, give to the land grabber an opportunity of

making his representation or of adducing evidence, if any, in this regard and consider every such representation and evidence.

(6) Any case, pending before any Court or other authority immediately before the commencement of the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987 as would have been within the jurisdiction of a Special Tribunal, shall stand transferred to the Special Tribunal, having jurisdiction, as if the cause of action on which such suit or proceeding is based had arisen after such commencement.

(7) Every case brought before the Special Tribunal shall be disposed of finally by the Special Tribunal, as far as possible, within a period of six months from the date of its having been brought before it.

(8) The Special Tribunal shall have all the powers of a Civil Court for purposes of review."

6. Amendment Of Section 8 :-

In section 8 of the principal Act,--

(i) In sub-section (1), the proviso shall be omitted;

(ii) after sub-section (1), the following subsection shall be inserted, namely:-

"(1A) The Special Court shall, for the purpose of taking cognizance of the case, consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved or in the interest of justice required or any other relevant matter:

Provided that the Special Court shall not take cognizance of any such case without hearing the petitioner.";

(iii) in sub-section (2), for the expression "(hereinafter in this section referred to as the said Code)", the expression "the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)" and for the words "shall be triable only in a Special Court constituted for the area in which the land grabbed is situated", the words "shall, subject to the provisions of this Act, be triable in the Special Court" shall be substituted;

(iv) after sub-section (2), the following subsections shall be inserted, namely:--

"(2A.) If the Special Court is of the opinion that any case brought before it is not a fit case to be taken cognizance of, it may return the same for presentation before the Special Tribunal:

Provided that if, in the opinion of the Special Court, any application

filed before it is prima facie frivolous or vexatious, it shall reject the same without any further enquiry:

Provided further that if on an application from an interested person to withdraw and try a case pending before any Special Tribunal, the Special Court is of the opinion that it is a fit case to be withdrawn and tried by it, it may for reasons to be recorded in writing withdraw any such case from such Special Tribunal and shall deal with it as if the case was originally instituted before the Special Court.

(2B) Notwithstanding anything in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), it shall be lawful for the Special Court to try all offences punishable under this Act.

(2C) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed. The evidence admitted during the criminal proceeding may be made use of while trying the civil liability. But additional evidence, if any, adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability. Any person accused of land grabbing or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence or oath in disproof of the charge made against him or any person charged together with him in the criminal proceeding:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any of the parties or the special court or give rise to any presumption against himself or any person charged together with him at the same proceeding.";

(v) sub-sections (3) and (5) shall be omitted;

(vi) in sub-section (6), the words "whether or not such persons are parties before the Special Court" shall be omitted;

(vii) to sub-section (6), the following provisions shall be added, namely:--

"Provided that the Special Court shall, by notification specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Court from any person including the custodian of evacuee property within the period specified therein will be considered by it:

Provided further that where the custodian of evacuee property

objects to the Special Court taking cognizance of the case, the Special Court shall not proceed further with the case in regard to such property:

Provided also that the Special Court shall cause a notice of taking cognizance of the case under the Act, served on any person known or believed to be interested in the land, after a summary enquiry to satisfy itself about the persons likely to be interested in the land."

(viii) for sub-section (7), the following sub-section shall be substituted, namely:-

"(7) It shall be lawful for the Special Court to pass such order as it may deem fit to advance the cause of justice. It may award compensation in terms of money for wrongful possession of the land grabbed which shall not be less than an amount equivalent to the market value of the land grabbed as on the date of the order and profits accrued from the land, payable by the land grabber to the owner of the grabbed land and may direct re-delivery of the grabbed land to its rightful owner. The amount of compensation and profits, so awarded and costs of re-delivery, if any, shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a Civil Court, in any other case to be executed by the Special Court:

Provided that the Special Court shall, before passing an order under this sub-section, give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard, and consider every such representation and evidence."

(ix) in sub-section (8), the words "having jurisdiction" shall be omitted.

7. Substitution Of New Sections For Sections 9 And 10 :-

For sections 9 and 10 of the principal Act, the following sections shall be substituted, namely:--

9. Special Court to have the powers of the Civil Court and the Court of Session--Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908), the Andhra Pradesh Civil Courts Act, 1972 (Act 19 of 1972) and the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the, Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of session and shall have all the powers of a. Civil Court and a

Court of session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

10. Burden of proof--Where in any proceedings under this Act, a land is alleged to have been grabbed, and such land is prima facie proved to be the land owned by the Government or by a private person, the Special Court or as the case may be, the Special Tribunal shall presume that the person who is alleged to have grabbed the land is a land-grabber and the burden of proving that the land has not been grabbed by him shall be on such person.

10A. Staff of the Special Court--(1) The Chairman of the Special Court may appoint officers and other employees required to assist the Special Court in the discharge of its functions under this Act.

(2) The categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Chairman of the Special Court shall be such as may be prescribed, after consultation with the Chairman."

8. Amendment Of Section 12 :-

In section 12 of the principal Act, for the words "No Court" and "Special Court", the words "No Court other than the Special Court" and "Special Tribunal" shall respectively be substituted.

9. Amendment Of Section 14 :-

In section 14 of the principal Act, for the words "the competent authority or", the words "any officer or employee of the Special Court or" shall be substituted.

10. Amendment Of Section 17 :-

In section 17 of the principal Act,--

(i) for the words "on or after", the words "whether before or after" shall be substituted.

(ii) after the words "Special Court" the words "or Special Tribunal" shall be inserted.

11. Insertion Of New Sections 17A And 17B :-

After section 17 of the principal Act, the following sections shall be inserted, namely:--

17A. "Review--The Special Court may in order to prevent the miscarriage of justice review its Judgment or order passed under

section 8 but no such review shall be entertained except on the ground that it was passed under a mistake of fact, ignorance of any material fact or an error apparent on the face of the record:

Provided that it shall be lawful for the Special Court to admit or reject review petitions in circulation without hearing the petitioner:

Provided further that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected.

17B. Guidelines for interpretation of Act--

The Schedule shall constitute the guidelines for the interpretation and implementation of this Act."

12. Addition Of The Schedule :-

To the principal Act, the following Schedule shall be added at the end, namely:-

"THE SCHEDULE

The Statement of Objects and Reasons to the Andhra Pradesh Land Grabbing (Prohibition) Bill, 1982.

It has come to the notice of the Government that there are organised attempts on the part of certain lawless persons operating individually and in groups to grab either by force or by deceit or otherwise lands belonging to the Government, a local authority a religious or charitable institution or endowment including a wakf or any other private person. The land grabbers are forming bogus co-operative housing societies or setting up fictitious claims and indulging in large scale and unprecedented and fraudulent sales of land through unscrupulous real estate dealer or otherwise in favour of certain section of people, resulting in large scale accumulation of the unaccounted wealth. As public order is also adversely affected thereby now and then by such unlawful activities of land grabbers in the State, particularly in respect of urban and urbanisable lands, it was felt necessary to arrest and curb such unlawful activities immediately by enacting a special law in that regard.

As the State Legislature was not then in session and as it was considered necessary to give effect to the above decision immediately the Andhra Pradesh Land Grabbing (Prohibition) Ordinance, 1982 was promulgated by the Governor on the 29th June, 1982.

This Bill seeks to replace the said Ordinance.

The Statement of Objects and Reasons to the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Bill, 1987.

Laws delays is an undeniable fact. Matters pending in Civil and Criminal Courts take frustratingly long periods to reach finality. Matters pending in Civil Courts are delayed notoriously for long periods. Even Criminal cases taking long periods for disposal. The observations of Honble Sri Y.V. Chandrachud, Chief Justice, Supreme Court of India, in *In Re. The Special Courts Bill, 1978* (quoted in the footnote appended below) highlight the reality. In urban areas due to pressure on land, prices have been constantly soaring high, and taking advantage of this phenomenon, unscrupulous and resourceful persons backed by wealth and following occupied without any semblance of right, vast extents of land belonging to the Government, Local authorities, Wakfs, and Charitable and Religious Endowments and, uvacuees and private person. In several cases such illegal occupations were noticed in respect of lands belonging to private individuals who are not in a position to effectively defend their possession. In many cases this is being done by organised groups loosely called "Mafia", a distinct class of economic offenders, operating in the cities of Andhra Pradesh. Unless all such cases of land grabbing are immediately detected and dealt sternly and swiftly by specially devised adjudicating forums the evil cannot subside and social injustice will continue to be perpetrated with impunity. If civil, and criminal actions are dealt by two separate forums, the desired objective cannot be achieved due to procedural delays. In every case of land grabbing the person responsible is liable in tort and also for criminal action. To remedy this menace it is felt that a Special Court should be constituted with jurisdiction to determine both civil and criminal liabilities and also award sentences of imprisonment and fine in order to advance the cause of justice in the same proceedings without being driven to duplication of litigation, of course taking care of procedural fairness and natural justice. The Special Court which consists of a retired Judge of Supreme Court or retired Chief Justice of a High Court, retired or serving Judges of a High Court and civil servants, serving or retired member of the Indian Administrative Service in the rank of Secretary to Government with experience in revenue matters will entertain only such cases in which the magnitude of the evil needs immediate eradication. Such court will avoid duplication and further the cause of justice, since under existing law, evidence given in a Civil Court cannot automatically be relied upon in a criminal proceeding. A high powered body like the Special Court, by the very nature of its composition will be the best safeguard to guard against possible

miscar(sic) of justice due to non-application of the exiting procedural law for determination of both civil and criminal liability. The Special Court, in exercise of its judicial discretion, will decide what type Of cases of alleged land grabbing it should entertain, the guidelines being the extent or the value or the location or other like circumstances of the land alleged to have been grabbed. In respect of matters in which the Special Court is not inclined to proceed with, the District Judge exercising jurisdiction over the area will constitute the Special Tribunal. The Special Tribunal shall have to follow the procedural law strictly and its jurisdiction is limited only to adjudicating civil liability.

With a view to achieving the aforesaid objective, it has been decided to amend the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 by undertaking suitable legislation.

As the Legislative Assembly of the State was not then in session and as it was considered necessary to give effect to the above decision immediately the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Ordinance, 1986 was promulgated by the Governor on the 16th September, 1986.

This Bill seeks to replace the said Ordinance.

APPENDIX

* Observations of Sri Y.V. Chandrachud, Chief Justice of the Supreme Court of India, in In Re The Special Courts Bill, 1978: (1979 1 SCC 380 at 429).

* "The congestion in courts, the mounting arrears and the easy and unconcerned dilatoriness which characterise the routine trials in our courts are well-known facts of contemporary life. They are too glaring to permit of disputation. Seminars and, symposiums are anxiously occupied in finding ways and means to solve what seems to be an intractable and frustrating problems."

13. Repeal Of Ordinance 4 Of 1986 :-

The Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Ordinance, 1986, is hereby repealed.