Goundla Venkaiah and another Vs Mandal Revenue Officer, RR District and others

Court: Andhra Pradesh High Court

Date of Decision: June 20, 2000

Acts Referred: Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 â€" Section 2, 3, 5, 7, 8
Constitution of India, 1950 â€" Article 226
Evidence Act, 1872 â€" Section 114

Citation: (2000) 4 ALD 311 : (2000) 4 ALT 107 : (2000) 2 APLJ 381

Hon'ble Judges: N.Y. Hanumanthappa, J; A. Gopal Reddy, J

Bench: Division Bench

Advocate: Mr. P.R. Balarami Reddy, for the Appellant; Government Pleader for Assignment, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A. Gopal Reddy, J.
This writ petition is filed challenging the order passed by the Special Court under A.P. Land Grabbing (Prohibition)

Act, 1982 in LGA No.41 of 1997, dated 18-8-1998 confirming the order passed by the Special Tribunal-cum-District Judge, Ranga Reddy in

OP No.421 of 1990, dated 27-5-1997.

2. The respondent-State filed application under the Land Grabbing Act, 1982 before the Special Tribunal against the petitioners herein for

recovery of possession of the schedule land after evicting the petitioners herein and for awarding compensation and profits and other reliefs and

also to initiate criminal proceedings against the petitioners herein under the provisions of the Land Grabbing Act.

3. A few facts, which are necessary to dispose of this writ petition are as follows:

According to the State, as per the information furnished in the revenue records of Khanament village bearing S, No.42 measuring Ac.18.19 guntas

was classified as Kharis Khata Sarkari and it is a Government land. One Sri Gondla Mallaiah, the father of the petitioners herein illegally grabbed

the land of an extent of Ac.5.00 situated in S. No.42 at Khanament village without entitlement and illegally trespassed into and started cultivating

the same for the last 8 to 10 years. After his death, the respondents who are his sons have been cultivating the same land. The applicant-State

demanded the respondents-writ petitioners to vacate the scheduled land. They refused to do so. Hence the applicant-State filed an application

before the Special Court under A.P. Land Grabbing (Prohibition) Act, 1982 on the ground that they are land grabbers.

4. On service of notice, petitioner No.l filed counter affidavit on his behalf and on behalf of the second petitioner resisting the claim of the

applicant-State stating that they and their predecessors-in-title have been in possession and enjoyment of the land for the last 50 years and thereby

perfected their title by adverse possession. They have been cultivating the same without interference either by the Government or other. It is further

stated that the petitioners herein are the landless poor persons. They are mainly depending on the schedule land. Their family consists of 10

members and they have been paying land revenue for the last 50 years. According to them, in the year 1962, the then Tahsildar, issued notice u/s 7

of the Land Encroachment Act to their father G. Mallaiah. On the representation given by Sri late Mallaiah, eviction proceedings were dropped.

On 1-3-1986 once again the Mandal Revenue Officer issued a notice u/s 7 of the Land Encroachment Act and the same was replied by their

father on 4-4-1986, The said proceedings were also dropped. According to them, the revenue records disclose that they are in possession and

enjoyment of the land for the last 50 years. Their further case is that they dug well and installed a pump set in the year 1986 itself and raising wet

crops for the last 14 years. It is stated that their father late G. Mallaiah obtained loan from the co-operative bank in the year 1975 for developing

the land. Earlier, the land was covered with full of stones, uneven and unfit for cultivation. By investing huge sums, the petitioners and other

members of the family levelled the land and made it fit for cultivation. The Government has no right to seek the land, even otherwise also the

petitioners were entitled for assignment of the said land. Dropping of proceedings initiated u/s 7 of the Land Encroachment Act disclose that

petitioners are not the land grabbers. Though the petitioners were entitled for seeking assignment, but the Mandal Revenue Officer instead of

assigning the said land resorted to land grabbing proceedings. As on the date of application for eviction, the petitioners had perfected their right

over the schedule property by way of adverse possession.

5. On the basis of the above pleadings, the Special Tribunal framed the following points for consideration:

(1) Whether the petition land is a Government land?

(2) Whether the respondents perfected the title over the petition land by their long possession?

6. In support of their case both the parties adduced the following evidence :

On behalf of the State Smt. Krishna Bharathi, Mandal Revenue Officer, was examined as PW1 and Exs.Al to A7 were marked. Ex.Al is the

sketch plan. Ex.A2 is the -certified copy of Pahani for the year 1950-60. Ex.A3 is the certified copy of Pahani for the year 1970-71. Ex.A4 is the

certified copy of Pahani for the year 1973-74. Ex.A5 is the Khasara Pahani. Ex.A6 is the certified copy of Pahani for the year 1987-88, Ex.A7 is

the certified copy of Pahani for the year 1988-89. On behalf of the respondents (writ petitioners) one M. Venkaiah was examined as RW1 and

Exs.Bl to B30 were marked, Ex.B1 is the Xerox copy of application. Ex.B2 is the Xerox copy of letter, 3.86. Ex.B3 to B6 are the Xerox copy of

notices. Ex.B7 is the File No.A3/99 of 85. Ex.B8 is the original receipt dated 19-12-1977. Ex.B9 is the General Notice dated 19-11-1979.

Ex.BlO is the Xerox copy of receipt dated 30-8-1977. EX.B11 is the Xerox copy of receipt dated 25-11-1977. Ex.B12 is the Xerox copy of

receipt dated 25-12-1977 and Ex.B13 is the Xerox copy of receipt dated 14-4-1978. Exs.B14 to B21 are the Xerox copies of receipts dated

16-6-1978, 15-12-3978, 14-7-1979, 14-7-1979,27-4-1980, 10-5-1980 and 16-12-1980 respectively. Exs.B22 to B27 are the Xerox copies

of land revenue receipts dated 17-7-1979, 18-11-1988, 31-10-1991 and 10-4-1993 respectively. Ex.B28 is the Xerox copy of invoice. Ex.B29

xerox copy of the electricity bill (original). Ex.B30 is the receipt issued by the APSEB.

7. After considering the evidence, the Special Court found that the schedule land is a Government land and the writ petitioners are in unauthorised

occupation of it, as such they are land grabbers within the meaning of Section 2(d) of the A.P. Land Grabbing (Prohibition) Act, 1982. The

conclusion reached by the Special Court to give the above finding is that the petitioners have not perfected their title by way of adverse possession

because their possession refers from 1962 onwards; possession of the writ petitioners cannot be said as open and hostile to the Government and

developments if any made by them in the schedule land did not bind the Government as the same was done without the knowledge or approval of

the Government. As such they were not entitled for assignment. Thus observing, the Special Court held that the petitioners are land grabbers and

accordingly ordered for their eviction. Aggrieved by this, the petitioners filed this writ petition.

8. Sri Baiaram Reddy, learned Counsel appearing for the writ petitioners attacked the order of the Special Court on the following grounds:

The order of the Special Court is illegal and without jurisdiction as the writ petitioners are not the trespassers. On the other hand, they have

perfected their title over the schedule property by way of adverse possession. First Gopaiah, senior uncle of the petitioners was in possession of

the schedule land even prior to 1959, thereafter their father Mallaiah and after his death the petitioners have been in possession and enjoyment of

the schedule land. The finding of the Special Court that the petitioners" possession over the schedule land was found ten years prior to the filing of

the application under the Land Grabbing Act is quite incorrect. On the other hand, Ex.A2 Pahani produced by the State at Col. No.13, the name

of the petitioner''s senior uncle Gopaiah has been shown as the person in possession and enjoyment of the schedule property. Similarly in the

Pahani for the year 1987-88 produced at Ex.A6, the name of the petitioners'' father Mallaiah has been shown as the person in possession of the

schedule property. The learned Counsel submitted that a reading of Exs.B2, B3, B5 and B6 clearly shows that the petitioners'' possession over the

schedule land dates back even prior to 1962 and 1959. Even otherwise as per the assignment policy they were lawfully entitled for assignment of

the schedule land, in view of their long possession and enjoyment of the land. The applicant-State did not dispute the possession and enjoyment of

the schedule land by the petitioners, earlier to them, by their father G. Mallaiah and by their senior uncle, Gopaiah. They improved the land by

obtaining loans from Agricultural Co-operative Societies, Canara Bank, dug a well, and installed a pump set by obtaining electric connection from

the Electricity Board. They have been paying assessment to the Government. Eviction notices issued on different dates, viz., 8-8-1962, 21-5-

1965, 21-2-1969, 22-6-1985, March 1986, 29-7-1985 and 4-4-1986 calling upon either the petitioners or their father to vacate the land, were

suitably replied. On receipt of such explanation, the authorities not only dropped the eviction proceedings but taking into consideration the

improvements made by the petitioners to the land found that the request of the petitioners for assignment of the schedule land in their favour as just

and bona fide. The silence on the part of the authorities in not passing any order on the request of the petitioners for assignment shall not be a

ground to declare that the petitioners'' possession over the schedule land as unlawful. When the State denied the genuineness of the entries made in

eviction proceedings initiated against Mallaiah or the petitioners and other pahani extracts produced by them, the petitioners filed IA No. 1595 of

1996 to summon the original records and other documents pertaining to eviction proceedings right from 1959. The said application though was

allowed, the authorities failed to produce the same for scrutiny. From this, an adverse inference has to be drawn against the State.

9. According to the learned Counsel, the petitioners are not liable to be declared as unauthorised occupants in view of the Boards Standing Order

No.26. He contended that as per G.O. Ms. No.1724, dated 26-8-1959 issued in connection with revised assignment policy in Telangana area of

Hyderabad, if any person is in unlawful possession of a land he has to be dealt with according to the said G.O. which suggests that wherever the

land is in unauthorised occupation of a person and fit for cultivation or cultivation is being carried on in it, and if such occupant comes within the

norms of assignment, the same be assigned in his favour. The Governmental authorities are aware that throughout the petitioners have been raising

agricultural crops in the schedule land and Jamabandi was held. The Government is also aware of the improvements made by the petitioners and

their fore-fathers to the schedule land. During Jamabandi held in the year 1973-83 the name of the petitioners" father Mallaiah was shown as the

person in possession and enjoyment of the schedule land. Even as per G.O. Ms. No. 1523 Revenue Department dated 11-6-1949, landless poor

persons in Sivoijama occupation of Government lands are entitled for assignment of land. Thus the petitioners were entitled for assignment of the

land in their favour irrespective of rise in value of the land due to recent developments round about the land and the village. To support the above

contentions, the learned Counsel placed reliance on the following decisions: T. V. Shamuel and others v. Special Cowl under A.P. Land Grabbing

(Prohibition) Act, 1982 1997 (4) ALD 119 Baljit Singh and Another Vs. State of Uttar Pradesh, , Hiralal and Others Vs. Badkulal and Others, ,

Mahant Shri Srinivasa Ramanuj Das Vs. Surajnarayan Dass and Another, , Ramyad Singh Vs. Mt. Pan Kuer and Others, , Ambica Prasad Takur

and others v. Ram Ekbal Rai, AIR 1966 SC 605 and K.V. Sreenivasa Rao v. Special Court under A.P. Land Grabbing (Prohibition) Act 1996

(4) ALD 1033

10. The learned Counsel further contended that initiation of proceedings under the Land Grabbing Act arises only when a person has taken

possession of land without lawful entitlement to it. But in the case on hand, the petitioners have perfected their title over the schedule land by

adverse possession as they have been in continuous possession and enjoyment from 1959 till the date of filing of the application by the State.

11. Thus contending, the learned Counsel appearing for the petitioners urged that the writ petition be allowed and the orders of the Special Court

and the Tribunal be set aside.

12. As an answer to these contentions Sri Sharif Ahmed, learned Government Pleader, contended that the order of the Special Court is a just one.

The Special Court considered the entire material placed before it and found that the petitioners are the land grabbers. According to him, stray

incidents of possession or possession for some period does not confer any right on the persons or to contend that they are lawfully entitled for

assignment of the land. In their explanations submitted pursuant to eviction notices, the petitioners themselves admitted that they are in unauthorised

possession of the schedule land. But they have requested for assignment of the same in their favour. When they sought for assignment of the

schedule land, they are not entitled to take a plea that they have perfected their title over the land by way of adverse possession. He further

contended that the first eviction notice was issued in the year 1962 and eviction petition was filed before the Special Tribunal-cum-District Court in

the year 1990. Thus the petitioners'' possession over the schedule land, if any, is less than the statutory period. Obtaining of loan from the Co-

operative societies or banks, digging of well and installing a pump set in the schedule property do not confer on the petitioners the status of an

owner of the land. If the petitioners are entitled for assignment, their case would have been considered by the State much earlier. The Board

Standing Order No.26 and G.O. Ms. No.1724, dated 26-8-1959 referred to above have no application to case on hand. The petitioners are not

entitled for assignment of the schedule land. As on today the schedule land is not under cultivation. Round about the land developmental activities

are going on and the value of the schedule land has been increased abnormally. The same is required for public purpose. As such it cannot be

assigned in favour of the petitioners. He lastly contended that reliance placed by the petitioners'' Counsel on the judgments referred to above, on

facts have no application to the case on hand. Thus urging, he sought the writ petition be dismissed.

13. To appreciate the rival contentions it is proper to extract hereunder some of the provisions of A.P. Land Grabbing Act:

Section 2(d) deals about ''land grabber'' which reads as follows:

''land grabber'' means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person

for taking alleged possession of lands or for construction of unauthorised structures thereon, or who collects or attempts to collect from any

occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts,

and also includes the successors in interest.

14. Section 2(e) deals about ''land grabbing'' which reads as follows:

''land grabbing'' means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable

institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a

view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licence agreements or any other illegal

agreements in respect of such lands, or to construct unauthorised structures thereon for sale or hire or give such lands to any person on rental or

lease and licence basis for construction, or use and occupation, of unauthorized structures; and the term ""to grab land"" shall be construed

accordingly.

15. Section 8 deals about the power of the Special Court which reads as follows:

(1) The Special Court may, either suo motu or on application made by any person, officer or authority take cognizance of and try every case

arising out of 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 this Act, and pass such orders (including orders by way of interim directions) as it deems fit;

(1-A) 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:

(2) Notwithstanding anything in the Code of Civil Procedure, 1908 (Central Act 5 of 1980) (the Code of Criminal Procedure, 1973) or in the

Andhra Pradesh Civil Courts Act, 1972, (Act 9 of 1972) any case in respect of an alleged act of land grabbing or the determination of questions

of title and ownership to, or lawful possession of any land grabbed under this Act, shall, subject to the provisions of this Act be triable in the

Special Court and the decision of the Special Court is final.

16. The case of the State is that out of the total extent of Ac.18.19 guntas classified as Kharis Khata Sarkari, i.e., the Government land situated in

S. No.42 of Khanament village, Sherilingampally, Mandal, Ranga Reddy district, the father of the petitioner namely Gondla Mallaiah grabbed an

extent of Ac.5.00 of land and started cultivating the same. After the death of Mallaiah, the petitioners have been in possession of the schedule land

and of Ac.5.00 and cultivating it without any lawful entitlement. The land is a valuable land. The petitioners are, thus, land grabbers and as such the

petitioners be declared as land grabbers and their eviction be ordered.

17. The stand taken by the writ petitioners is that they have been in possession and enjoyment of the property continuously for more 50 years,

namely earlier to the petitioners their father and their predecessors were in possession. Thus, they have perfected their title over the schedule land

by way of adverse possession. Originally the schedule land was fallow and uneven. By investing huge sums the petitioners have developed. For

improving the schedule land they borrowed money from the co-operative institutions and also Canara Bank and dug a well in the land, installed a

pump set and obtained power connection from the Electricity Board. There were notices issued u/s 7 of Land Encroachment Act which were

suitably replied by their father. According to the petitioners, they are agriculturists by profession and they are landless poor. They and their entire

family mainly are depending upon the schedule land to eke out their livelihood. Throughout, the petitioners earlier to them their predecessors paid

land revenue to the Government. Their possession and enjoyment over the schedule land has been evidenced in the tax receipts produced by them.

The names of their predecessors were entered in the revenue records produced by the State itself.

18. We have the evidence both oral and documentary. In the revenue records produced by the State, at Ex.Al in Col. 11 it is mentioned that the

land is Sarkari and at Col. 9 under the column of Other Rights, the name of one Gopaiah is mentioned. Exs.A2 to A7 are the pahani extracts for

the years from 1950-60, 1970-71, 1973-74, 1987-88 and 1988-89 produced by the authorities of the State wherein the names of either the

petitioners, their father Mallaiah or Gopaiah, senior uncle of the petitioners, have been shown as the persons in occupation of the schedule land.

Exs.Bl and B2 are the Xerox copies of the letters. Exs.B3 to B6 are the eviction notices issued u/s 7 of the Land Encroachment Act. Ex.B7 is the

file No.A3/99 of 1985. Ex.B8 is the tax receipt. Ex.B9 is the general notice dated 19-11-1979. Exs-BlO to B27 are the land revenue receipts

produced by the petitioners. EX.B28 is the invoice. Ex.B29 is the electricity bill in original. Ex.B30 is the receipt. Exs.B6 and B7, which further

strengthen the writ petitioners'' case, are extracted hereunder:

''"Notice u/s 7 of APLE Act III of 1905

Office of the Tahsildar,

Rajendranagar Taluk,

Dated 22-6-1985.

File No.A5/

To

R. Mallaiah

Sri Rakthapu Mallaiah

r/o Kothaguda village, Rajendranagar taluk.

Whereas you are reported to be in unauthorised occupation of the land specified in the schedule below, which is the property of Government, you

are hereby given notice that if you so desire you may on 25-6-1985 at 1.00 p.m., show-cause either in person or in writing before Tahsildar why

you should not in addition to the full assessment on the land u/s 3(i) of the Act to the date prescribed by the or u/s 3(ii) of the Act be charged a

penalty for such occupation u/s 5 of the Act HI of 1905 and or be subjected to eviction from the land and forfeiture of the crops products, building

constructions and things deposited thereon u/s 6 of the said Act.

SCHEDULE

Village S.No. Description of land Entire extent Occupied Extent Nature of occupation

Ac. Gts Ac. gts

Khanamet 42 Poramboke 18-12 7-12 Cultivation

Sd/-

Mandal Revenue Officer

Serilingampally

19. To the above notice, Rakthapu Mallaiah, S/o Venkaiah (Rakthapu is the surname of Mallaiah) submitted his explanation at Ex.B7 which reads

as follows:

Before the Mandal Revenue Officer Serilingampally, Rangareddy District

Between:

Rakthapu Mallaiah., S/o Venkaiah, Aged about 85 years, Occ: Agriculture, R/o H. No. 1-20, Kothagudem village, Lingampally Revenue Mandal,

Rangareddy District.

Sub:Reply to the notice u/s 7 of the The A.P. Land Encroachment Act HI of 1905.

That the petitioner most humbly submit as follows:

(1) That the petitioner herein has been ; served with a notice dated 22-6-1985 u/s 7 of the A.P. Land Encroachment Act, and the allegation that

the petitioner is in possession of 7 acres 12 guntas, out of S. No.42 of Khanamet village, Revenue Mandal Sri Lingamapalli, as such the petitioner

herewith submit the ""following reply for kind consideration.

(2) That the petitioner is in possession of the above referred land since more than 50 years as he being the landless poor person. Further, he has

invested considerable amounts for its developments by digging a well and installing electric motor with pumpset and also fencing the said land.

(3) That the petitioners possession is continuously being recorded in the pahanies since more than 50 years and also the petitioner paid the land

revenue in respect of the said lands.

(4) That the said land initially brought under cultivation by the petitioner nearly 50 years back by reclaiming the land and developing the same as

per the Government-policy for assigning the land to the landless poor persons. Further the petitioner has been given understanding that the said

land shall be assigned to the petitioner and it is under continuous, uninterrupted and peaceful possession of the said land, hence his possession

could not be termed as unauthorised or unlawful.

(5) That without prejudice to the above contention the petitioner is in continuous, uninterrupted and peaceful possession of the said land since more

than 50 years hostile to the interest of the Government, as such the petitioner has derived the prescriptory title to the said land consisting of himself

and four sons constituting Joint Hindu Family.

(6) That in view of the prescriptory title derived by the petitioner the provisions of Encroachment Act is inapplicable and his eviction as alleged

under the notice is quite unwarranted.

(7) That this Hon''ble Court has no jurisdiction to entertain the proceedings.

(8) That other relevant record and other grounds will be submitted and urged at the time of enquiry.

Hence for the above stated reasons it is most humbly prayed that this Hon''ble Court may be pleased to cancel the proceedings initiated under

Encroachment Act in the interest of justice.

20. One Smt. Krishna Bharathi, MRO, Serin I ingam pally mandal was examined as PW1. She deposed that the petition is filed for an extent of

Ac.5.00 in S. No.42 in Kanament village; the total extent of land is Ac. 18.19 guntas and the boundaries of the schedule land are as follows:

North : Remaining portion of S. No.42

South : Village boundary of Madaur.

East : S. Nos.39 and 40

West : Boundary of Madapur.

She further stated that as per the revenue records S. No.42 is a Government land classified as Bancharai Sarkari. She admits the entries made in

Pahani extracts at Exs.A2 to A7. According to her, the market value of the schedule land as on the date of the application was Rs.1,00,000/- and

as on the date of her deposition the market value was at 15 lakhs rupees per acre. She stated that the respondents'' (writ petitioners) father have

grabbed the schedule land about 8 to 10 years prior to the filing of the petition. He died three years prior to the filing of the application. After the

death of the father of the petitioners, the petitioners have been continuing in unlawful possession of the schedule land. She further stated that she

inspected the petition schedule land recently and found Ac.3.00 of land is under cultivation and crop was harvested by the petitioners. The other

Ac.2.00 of land remained as undeveloped. She stated that if there is encroachment in the Government land generally they issue a notice u/s 7 of the

Land Encroachment Act to the encroachers. If, on receipt of explanation the same is not satisfactory the order u/s 6 of the said Act will be passed,

or if satisfied with the explanation, the matter will be closed. She further stated that if the encroachers are landless poor persons they will try to

assign the land to the person in rural areas. She admits the existence of well in the land with electric connection. She pleaded ignorance as to the

issue of notice to the father of the petitioner, the petitioners obtaining loan from the Cooperative bank, digging of well and also getting of electric

connection. While looking into the records, she can say that Sivai Jamabandi tax was paid by the petitioners or their father during 1979-83.

21. As against the said statement of PWl,Mr. Venkaiah,the 1st petitioner herein was examined as RW1. He stated that since last 50 years they

have been cultivating the schedule land. There is no other land for them except the schedule land. Their father was served with eviction notices in

the year 1962 and the same were replied. Later the proceedings were closed. All the original records were submitted to the MRO by their father

on 4-4-1986. They filed an application IA No. 1595 of 1996 to summon the originals. Though an order was passed to summon the records, the

same were not produced. Hence they filed xerox copies of Exs.B3 to B7. The authorities of the State never objected the petitioners in improving

the land, digging a well in the land and installing a pump set therein. Their father died in the year 1989. They did not receive any eviction notice.

22. During the course of arguments both sides raised a dispute as to the nature of the schedule land. According to Sri Balaram Reddy, learned

Counsel appearing for the petitioners, the schedule land is an agricultural land and agricultural operations are being carried on in it. Whereas the

learned Government Pleader contended that the schedule land has been converted into plots. Because of this situation, in order to ascertain the

correct possession, both the Counsel requested the Court to appoint advocate-Commissioners to visit the land and note down the nature of the

land, its location and topography." Accordingly two sets of Advocate-Commissioners were appointed on the request of both parties. They visited

the schedule land on 10-6-2000. On behalf of the petitioners, their Counsel and on behalf of the State, Mr. V. AshokKumar, MRO,

Serilingampally, Mr. Venkaiah Mandal Surveyor, Mr. AnandKumar, Revenue Inspector, and Mr. Yugandhar Rao, VAO of Kondapur,

accompanied the Advocates-Commissioners. Advocates-Commissioners executed the warrant in their presence on the appointed date. In the

commission warrant, the Advocates-Commissioners were asked to ascertain and submit their report to the Court on the following aspects.

(1) Whether the land is an agricultural land and whether there are any crops existing and if not cultivated during the last agricultural seasons and

whether the land has been converted into plots?

(2) Whether there is a well with electric pump set existing or not?

(3) And the nature of the surrounding lands.

23. The two sets of reports of the Advocates-Commissioner as to the nature of the schedule land, its possession and enjoyment are same and they

read as follows:

The schedule land is an agricultural land. There are crops existing on the schedule land such as, jawar, paddy seed and green leafy vegetables and

in a portion, the paddy crops was cultivated during the last agricultural season, as traces of the same are visible. The schedule land has not been

converted into plots and the same is being ploughed for cultivation with the help of the bullocks.

There is an existing old open well from which water is being drawn and supplied to the fields with the help of an electric motor which is fitted inside

the well. Water is being supplied to the fields through pipe lines laid over the ground and we also found that there are water channels through out

the land. There is also an old room with electricity connection.

With regard to physical features of the schedule land, we found that a portion of the schedule land is rocky and the same is not suitable for

cultivation. In the said rocky portion We found a number of trees such as Neem, Mango, Gauva, Tamarind, etc. We also found about eleven cattle

grazing in the land. There is also a dry hay stack and a dung manure pit.

With regard to the nature of the surrounding lands, towards the northern side of the schedule land, a compound wall is existing and the land

adjoining it namely land in S. Nos.43 and 44 has been converted into plots. The vacant land on the south-eastern side of the schedule land is the

village boundary of Madapur. On the south-western side of the schedule land there are teak and eucalyptus plantations and the same is the village

boundary of Kondapur. The land towards the eastern side is vacant and the same is being ploughed for cultivation. We were informed by the

Revenue authorities that the said land is part of S.No.42.

The schedule land is fenced on three sides using stone pillars and barbed wire. We asked the names of the persons working in the fields and they

informed that they are the petitioners and their family members.

With the assistance of the Mandal Surveyor we prepared a rough sketch of the schedule land. We are herewith filing the same. We are also filing

the rough notes prepared by us while executing the warrant, which is also signed by all the parties concerned.

24. In the light of the information furnished above, in addition to the arguments advanced by both sides, we have to examine how far the orders of

the Courts below are correct.

25. The Government of Andhra Pradesh with a view to evolve a common policy in matters of assignment of Government land situated in Telangana

area of the State of A.P., made Rules in its G.O. Ms. No.1406, Revenue, dated 25-7-1958. Rule I deals about categories of lands not available

for assignment. Rule III deals about persons eligible for occupation or assignment of Government lands which reads as follows:

Lands at the disposal of the Government should be assigned only to landless poor persons who directly engage themselves in cultivation, including

Harijans, ex-toddy tapers, Backward communities and weavers:

Provided that physically handicapped persons who satisfy the normal criteria as others should not be discriminated in the matter of assignment

simply because they are physically handicapped.

26. Rule IV defines the landless poor persons which reads as follows:

A landless poor person is one who owns not more than one acre of wet or 5 acres or dry land and is also poor. The question whether a person is

poor or not is left to the discretion of the assigning authorities. One acre of wet will be treated as 5 acres of dry land. Irritable dry land shall be

treated as wet land. The share of each member of a joint family, as also the enjoyment of the income of the joint family by an applicant will be

taken into consideration for deciding whether or not he is a landless poor person.

27. Rule V prescribes the maximum extent of land which may be assigned to a single individual which reads as follows:

The maximum extent of land which may be assigned to a single individual shall be limited to one acre wet or five acres dry, subject to the proviso

that in computing the area lands owned by the assignee shall be taken into account, so that the lands assigned to him together with what is already

owned by him does not exceed the total extent of one acre of wet or five acres of dry land. Variations upto 10 per cent may be allowed wherever

necessary.

28. Rule VIII deals with preference to be given amongst eligible applicants which reads as follows:

Preferential claim shall be recognised in the case of the following categories of persons;

(i) sivoijamadars who have expended a material amount of labour or money in reclaiming or improving the land;

(ii) persons who hold trees on the land under the tree tax system;

(iii) persons who have been using the water of wells in the land for cultivation; and

(iv) preference shall be given to the people of the village where the lands are situated.

29. Rule XIII deals with the powers of assigning authorities.

30. The Government by their subsequent G.O. Ms. No.1724, Revenue Department dated 26-8-1959, again revised the assignment policy. As per

Rule I of the revised Rules, Poramboke land shall be eliminated from the category of lands not available for assignment and they should made

assignable. Rule II deals with the landless poor person which reads as follows:

A landless poor person is one who owns not more man two and half acres of wet land or five acres of dry land and one acre of wet land will be

treated as two acres of dry land.

31. Rule III deals with maximum land which may be assigned to a single individual which reads as follows:

The maximum extent of land which may be assigned to a single individual shall be limited to two and half acres wet or five acres of dry :

Provided that the maximum extent of land that may be assigned in the Schedule areas to members of the Schedule Tribes residing in those areas

shall be given acres of wet land or ten acres of dry land in each case.

32. It is also stated in the said G.O. that the following principles should be observed in this connection;

Old Occupation: All unlawful encroachers should be served with notices and evicted. If the lands are termed reserved lands for specific purposes

in Telengana eviction should be made from these lands without any consideration. If they are unobjectionable i.e., if they are fit to be given on

cultivation, the objections of the encroachers should be heard after giving them notice and the following aspects should be enquired into;

(i) the duration of the occupation: whether the Government was silent in respect of the occupation or has been taking steps for eviction;

(ii) whether the encroacher has, at his own expense made additions of buildings, wells kuntas or land gardens, etc., if he has, the proportion of this

expenditure to the value of the land and reason why the Government was silent in the matter; or whether the additions were made in spite of raising

objection;

(iii) whether, despite, the occupation being illegal, the encroacher got an opportunity to occupy the land illegally or utilise it because of the attitude

of the Government and whether he has made it his permanent source of livelihood;

If, as a result of the enquiry of the above points, it is found that the encroacher has improved the land or has deemed it his permanent source of

livelihood in good faith the land should be assigned to the encroacher subject to prescribed limits and he should be evicted from the portion in

excess of those limits. The concessions of granting pattas should be continued only to land used for agricultural purposes but not to lands used for

non-agricultural purposes. If his bona fides are not proved, he should be evicted from all the lands.

33. It has come in evidence and also from the reports of the Commissioners that the schedule land is an agricultural land, the petitioners are in

possession and enjoyment of the same. They have raised several crops. As per the revised assignment policy, the petitioners, who are landless

poor persons and who made improvements to the schedule land, were entitled for assignment of the same as there were no legal impediments for

such assignment. Silence on the part of the authorities right from 1959 up to the filing of petition before the Special Tribunal by the State in the year

1990 clearly indicates that the authorities were satisfied with the stand taken by the writ petitioners or their predecessors that they have a right to

continue in possession and enjoyment of the schedule property by virtue of their long possession and they were entitled for assignment of the

schedule land. If the authorities were serious to evict the petitioners or their predecessors from the schedule land, they would have taken

appropriate steps much earlier instead of allowing the petitioners to continue in possession and enjoyment of the schedule property. Also they

would not have collected land revenue from the petitioners or their predecessors. Even if a person is governed by "sivai jamabandi", such person is

also entitled for assignment of land. One cannot ignore the right of an unauthorised occupant. When he satisfies or fulfils the conditions stipulated

under a statute to seek assignment of Government land and thus became eligible for assignment of such land can he be evicted from it? The answer

of the authorities in this behalf is unsatisfactory and evasive.

34. Now we have to see whether the petitioners have proved their plea that they have perfected their title over the schedule land by way of

adverse possession.

35. Originally the ownership of the schedule land was vested with the Government. The possession and enjoyment of the schedule land right from

1959 by Goundla Gopaiah, the senior uncle of the petitioners; after his death by Goundla Mallaiah, father of the petitioners; and after the death of

Mallaiah, by the petitioners, is not disputed by the State. To show that Goundla Gopaiah was in possession of the schedule property even during

1959 till his death, the petitioners have filed additional affidavit sworn to by the 1st petitioner. The relevant portion is extracted hereunder:

In Ex.A2 Pahani Patrika for the year 1959-60 filed by the respondents herein in which the petitioner''s father''s brother, namely Gopaiah is shown

in the occupation column of the property. Gopaiah is the brother of my father. In the year 1959 Gopaiah was the Kartha of the family. Therefore

his name is shown in the occupation column. After his death my father used to look after the family. Therefore notices under Land Encroachment

Act were issued in the name of my father right from the year 1962 under Exs.B3, B4, B5, B6 and B2. The proceedings were dropped after

submitting explanations. Therefore it clearly shows that the petitioners are in possession and enjoyment of the property through their ancestors right

from 1959. The petition before the Special Tribunal was filed by the respondents in the year 1990. Therefore the petitioners proved their un-

interrupted possession and enjoyment beyond 30 years.

36. If an owner of a property is aware that his property is under the occupation of another person who claims ownership over the same and such

owner remained silent keeping his fingers across for the entire statutory period, it has to be presumed that such owner has abandoned his right over

his property and allowed the occupant to enjoy it. In the case on hand, the possession and enjoyment of the schedule land by the petitioners and

prior to them by their predecessors was open, continuous and to the knowledge of the State the original owner of the schedule land.

37. In the case of K. V. Sreenivasa Rao v. Special Court, (supra), the Division Bench of this Court held that plea of adverse possession can be

raised before the Special Tribunal if such plea is not contrary to the provisions of the Act.

38. What is the adverse possession and what are the principles which govern the plea of adverse possession and plea of tacking has been

explained by the Division Bench of this Court in the case of Soham Modi and another Vs. Special Court under A.P. Land Grabbing (Prohibition)

Act and others, , which is extracted hereunder:

Adverse possession is a mixed question of facts and law which has to be decided on the material placed by the parties. It commences in wrong

and maintains against a right. To establish adverse possession, the burden of proof lies on those who sets up adverse possession. Adverse

possession means, is possession by a person holding the property on his own behalf or on behalf of some person other than the true owner having

a right to immediate possession, provided the true owner is not under a disability of incapable of suing. The requirement of adverse possession are

that ""the possession must be nee vi nec clam nec precario which means the possession required must be adequate in continuity, in publicity and in

extent which one must establish. It implies dominion and control and the consciousness in the mind of the person having dominion over an object

that he has it and can exercise it. It contemplates hostile possession namely possession expressly or impliedly denying the title of the true owner.

Here possessor must prove, that he is not acknowledging the right of others but denies the same. To make a claim on the basis of adverse

possession, such possession shall be hostile, under a claim or colour of title, actual, open, notorious, exclusive and continued for the required

period of time thereby giving an indefeasible right of possession or ownership to the possessor by the operation of the limitation of action. If an

owner of the land having notice of the fact that his property is occupied by another who is claiming dominion over it, nevertheless stands-by during

the entire statutory period and makes no effort to eject the claimant or otherwise protect his title, ought not to be permitted, for reasons of public

policy, to maintain an action thereafter for the recovery of his property land. In other words the establishment of title by adverse possession is said

to be on the basis of the theory of presumption that the owner has abandoned the land to the adverse possessor. It is sufficient that the possession

should be overt and without any attempt at concealment so that the person against whom time is running out, if he exercise due vigilance to be

aware what is happening.

Thus there must be evidence of open assertion of hostile title coupled with exclusive possession and enjoyment to the knowledge of the other. In

the matter of possession a mental element namely animus possidendis must be present. It is also relevant to state here that the party claiming

adverse possession must establish that he was in such adverse possession for twelve years before the date of the suit and for computation of such

period he can avail of the adverse possession of such person or persons through whom he claims but not the adverse possession of the

independent trespassers as held by the Supreme Court and other High Courts in the following cases, namely S.M. Karim Vs. Mst. Bibi Sakina, ;

Mohammed Sab Wallad Gafar Sab Vs. Abdul Gani Wallad Mohammed Hayath and Others, and Ram Krishna Granthagar and others Vs. Ahi

Bhusan Ghosh and others, .

The normal thinking is that if a person who is in possession of the property belonging to other desires to setup a claim of adverse possession then

he shall prove that he has been in possession of the property continuously without any break either by himself or claiming continuity from a person

who was in possession of the same earlier to him for a period of 12 years prior to the filing of the suit. In other words, it can be proved by tacking.

In several authorities it has been laid down that even the trespassers can take the plea of adverse possession provided there is continuity in such

possession for more than the statutory period. It is popularly known as "tacking". Here the nature of possession of persons setting up the plea of

adverse possession shall be open with sufficient publicity so as to attract the notice and the knowledge of the other side. Only such acts of

possession be public ones which would attract the notice of other side, but if the other side failed to take note of the same, time would continue to

run against him. It is also recognised principle of law that even after the declaratory decree is obtained by a person unless he takes appropriate

steps for recovery of possession, the declaratory decree by itself would not prevent running of time. Adverse possession prior to the suit can be

tacked to the adverse possession continuing thereafter. Mere decree for declaration of title and recovery of possession would not interrupt the

running of time. It remains a mere declaratory decree. However, if a decree for recovery of possession is followed by actual seizure of the

property either in execution or by an amicable arrangement or compromise, then a break in the running of time comes into operation from the date

of seizure as held by Bombay High Court and High Court of Andhra Pradesh while deciding the suit filed for declaration of title and possession in

Dagababai v. Sakharam AIR 1948 Bom. 149 M. Bhikshmia v. Venugopalarao AIR 1989 AP 146 .

In Jamuna Devi Vs. Girija Devi and Others, , the Division Bench of Patna High Court in the matter of tacking by adverse possession held that one

trespasser deriving interest from another trespasser can claim tacking of periods of possession by both the trespassers. Further adverse possession

arises where the trespassers have no title.

In the case of Wuntakal Yalpi Chenabasavana Gowd Vs. Rao Bahadur Y. Mahabaleshwarappa and Another, , the Supreme Court held that a

mere mental act on the part of the person disposed unaccompanied by any change of possession cannot affect the continuity of adverse possession

of the deseizor.

39. Some of the documents produced by both the parties showed the fact of continuous possession and enjoyment of the schedule property by

Gopaiah, from him Mallaiah and later by the petitioners. When the genuineness of the entries of those documents was disputed by the State, the

petitioners filed an application IA No.1595 of 1996 to summon the original documents which were in the custody of the authorities. Though the

said application was allowed, the authorities failed to produce the same. From this an adverse inference can be drawn against the State that if such

documents were produced it would have gone in favour of the petitioners as held by the Supreme Court in the case of Baljit Singh and Another

Vs. State of Uttar Pradesh, and Hiralal and Others Vs. Badkulal and Others, . In Baljit Singh''s case (supra), the Supreme Court held as follows:

Non-production of documents, copies of kasra, khatauni, conclusively showing in actual cultivating possession of land in dispute. Investigating

Officer should say any possession of these documents not producing them to proof alleged possession of the deceased at trial. Adverse inference

that the land was not in cultivating possession of the deceased can be drawn.

40. In the case of Badkulal the Supreme Court held as follows:

Defendant was in possession of account books kept by him and from which the balance could be ascertained should produce them before Court.

He cannot be heard to say rely upon the abstract document of onus of proof, that it was not part of his duty to produce them unless he was called

upon to do so.

41. From the material available it is clear that the petitioners have been in continuous possession successfully without any break right from 1959

upto the date of filing of the petition by the State in the year 1990 filed seeking their eviction. Thus they are entitled to invoke the principle of

''tacking''.

42. When existence as to certain position is shown in some documents for a period then one can resume the similar situation was existing prior to

the same.

43. In the decision rendered by the Patna High Court in the case of Ramyad Singh Vs. Mt. Pan Kuer and Others, , the High Court held that

presumption as to possession of backwards can be drawn on the facts and circumstances.

44. While interpreting the scope of Section 114 of the Evidence Act, the Supreme Court in the case of Ambica Prasad Takur and others v. Ram

Ekbal Rai 1966 SC 605 page 606 held as follows:

If a thing or a state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forwards and backwards may

some times be drawn. The presumption of future continuance is noticed in illus. (d) to Section 114. In appropriate cases, an inference of the

continuity of a thing or state of things backwards may be drawn under this section, though on this point the section does not give a separate

illustration. The rule that the presumption of continuance may operate irrespectively has been recognised both in India. This is rule of evidence by

which one can presume the continuity of things backwards.

45. The evidence produced by the State itself clearly established that the petitioners have perfected their title over the schedule land by way of

adverse possession applying the principle of ''tacking''. Thus possession of the petitioners over Ac.5.00 of schedule land is not without lawful

entitlement. The evidence available does not suggest that they are land grabbers and the schedule land has been grabbed by them. On the other

hand they entered the land as landless persons and they requested the Government for assignment by virtue of their long standing possession and

improvements made to the land and paying tax to the Government. They proved that they are lawfully entitled to continue in possession and

enjoyment of the land. As such their possession is not one as defined in the A.P. Land Grabbing (Prohibition) Act, 1982 and the petitioners will not

come within the purview of the said Act as held by this Court in the case of T. V. Shamuel and others v. Special Court under A.P, Land Grabbing

(Prohibition) Act, 1982 1997 (4) ALD 119 (supra), which is extracted hereunder:

The provision does not mean vesting of authority in the Tribunal to treat a person as grabber of the land when Statute confers the right upon him to

occupy the land. ""Land Grabbing"" as is defined in Section 2(e) means an activity of grabbing by a person or others without any lawful entitlement

and with a view to take illegal possession of such lands etc. The crux of the matter is after coming into possession of the land to which he is not

lawfully entitled, but once the law itself cares the rights in his favour as in the Slum Act, the matter is taken out of the purview of ""land grabbing

and consequently of the Land Grabbing Tribunal. The Court or the Tribunal even if they have the jurisdiction, are to decide only in accordance with

established law, of which the Slum Act is one, and once it is found that under the Slum Act valid right or title has been created in favour of some

persons, the Special Court is to respect it.

46. We are aware that the scope of Article 226 of the Constitution to interfere with the order of the Special Court is very much limited. It is not

open to this Court to disturb the findings of fact while sitting under Article 226. This Court cannot act as a fact -finding authority, but it can interfere

only when there is an error apparent on the face of the order as held by the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan

and Others, , wherein it was held as follows:

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by

the Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction

committed by inferior Courts or Tribunals; there are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in

excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court

or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the

order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the

jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This

limitation necessarily means that findings of fact reached by the inferior Court or Tribunal is a result of the appreciation of evidence cannot be

reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an

error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of cerliorari can be issued if it is

shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously

admitted inadmissible evidence which has influenced the impugned finding. Similarly if a finding of fact is based on no evidence, that would be

recorded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, We must always bear

in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant

and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of

evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said

points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a

writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, ; Nagendra Nath Bora and

Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, and Kaushalya Devi and Others Vs. Bachittar Singh and

Others, .

It is of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by

a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where

it is manifest or clear that the conclusion of law recorded by an inferior Court, or Tribunal is based on an obvious misinterpretation of the relevant

statutory provision, or something in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law,

the said conclusion can be corrected by a writ of cerliorari. In all thee cases, the impugned conclusion should be so plainly inconsistent with the

relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the

record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court

may need an argument to discover the said error, but there can be no doubt that what can be corrected by a writ of certiorari is an error of law

and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If

a statutory provision is reasonably capable of two constructions and one construction has been adopted by inferior Court or Tribunal, its

conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt

either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the

record. Whether or not an impugned error is an error of law and an error of law which is apparent on the fact of the record, must always depend

upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or

contravened.

47. It has come in evidence that originally the State was the owner of the schedule land. But it allowed the petitioners and their predecessors to

enjoy the schedule land as their own peacefully, continuously and to its knowledge for more than the statutory period, The petitioners clearly stated

in their counter filed before the Special Tribunal as to how and when their adverse possession commenced and nature of their possession of which

the authorities are quite aware. The petitioners" possession over the schedule land is hostile to the State as they have established the ingredients,

namely the nature of possession as adequate, in continuity, publicity and extent. The authorities did not object for such continuous possession and

enjoyment. As mentioned earlier the principles of adverse possession by tacking will apply to the case of the petitioners. Thus, the petitioners have

perfected their title over the schedule property by adverse possession. But the Tribunal without satisfying whether the State has made out a prima

facie case for the eviction of the petitioners, entertained the application and ordered eviction of the writ petitioners which was blindly accepted by

the Special Court. As the petitioners have succeeded in establishing that they have been in possession and enjoyment of the schedule land for more

than the statutory period, and perfected their title over the schedule property by way of adverse possession, to give a finding that the petitioners are

land grabbers is quite incorrect and illegal. In our view the orders of! the Courts below are in contravention of Sections 2(d), 2(e) and 8 of A.P.

Land Grabbing (Prohibition) Act, 1982. Having reached the above conclusion, we hold that the application filed by the State seeking the eviction

of the writ petitioners is illegal and misconceived.

48. Accordingly, the writ petition is allowed and the order of the Special Tribunal-cum-District Judge, Ranga Reddy passed in OP No.421 of

1990, dated 27-5-1997 and the order of the Special Court under A.P. Land Grabbing (Prohibition) Act, 1982, passed in LGA No.41 of 1997

dated 18-8-1998, confirming the order of the Special Tribunal, are set aside. Consequently the application filed by the State under sub-section (1)

of Section 7-A and sub-section (1) of Section 8 of the A.P. Land Grabbing (Prohibition) Act, 1982 seeking the eviction of the writ petitioners is

dismissed. However, there shall be no order as to costs.