

# Mandal Revenue Officer vs Goundla Venkaiah & Anr on 6 January, 2010

**Equivalent citations:** AIR 2010 SUPREME COURT 744, 2010 (2) SCC 461, 2010 AIR SCW 977, (2010) 2 ANDHLD 115, (2010) 3 KCCR 42, (2010) 5 MAD LJ 134, 2010 (1) SCALE 206, 2010 (1) SCC(CRI) 1501, (2010) 1 SCALE 206

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**Bench:** Asok Kumar Ganguly, G.S. Singhvi

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1569 OF 2001

Mandal Revenue Officer

... Appellant

Versus

Goundla Venkaiah and another

... Respondents

J U D G M E N T

G.S. Singhvi, J.

1. This appeal is directed against order dated 20.6.2000 passed by the Division Bench of the Andhra Pradesh High Court whereby it allowed the writ petition filed by the respondents, quashed the orders passed by the Special Tribunal and the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as the 'Land Grabbing Act') and declared that the respondents have acquired title over the schedule property by adverse possession.

2. Gonda Mallaiah (predecessor of the respondents) illegally occupied 5 acres land comprised in Survey No.42, Khanament village, Rangareddy District, which is classified in the revenue records as Kharizkhata-Sarkari. In 1965 and 1986, notices were issued to Gonda Mallaiah under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 but no order appears to have been passed for his eviction. In 1990, Mandal Revenue Officer, Serlingampally, Rangareddy District (appellant herein) filed an application before the Special Tribunal constituted under the Land Grabbing Act for

recovery of the possession of 5 acres land by alleging that the same was illegally occupied by Gonda Mallaiah. During the pendency of the application, Gonda Mallaiah died and the respondents herein were brought on record as his legal representatives. In their reply, the respondents denied the allegation that their father had illegally occupied the land and pleaded that they have acquired title by adverse possession because they are in possession of the land and cultivating the same for last more than 50 years without any interference or obstruction. The respondents further pleaded that being landless poor they are entitled to assignment of land as per the Board's Standing Orders, but instead of acting on their representations, the appellant initiated proceedings under the Land Grabbing Act by wrongly treating them as land grabbers.

3. By an order dated 27.5.1997, the Special Tribunal allowed the application of the appellant and declared that the schedule land is Government land which had been grabbed by Gonda Mallaiah and his successors and directed them to hand over possession thereof to the Government within 2 months. The appeal preferred by the respondents was dismissed by the Special Court by detailed order dated 18.8.1998.

4. The respondents challenged the orders of the Special Tribunal and the Special Court in Writ Petition No.30262 of 1998. The Division Bench of the High Court did not disturb concurrent finding recorded by the Special Tribunal and the Special Court that the schedule land is Government land but set aside the orders passed by them on the premise that the respondents have acquired title by adverse possession and as such they cannot be evicted by being treated as land grabbers.

5. Shri R. Sundervardhan, learned senior counsel for the appellant submitted that the impugned order is liable to be set aside because the laboured attempt made by the High Court to justify its interference with the concurrent finding recorded by the Tribunal and the Special Court on the issue of illegal possession of the respondents and their predecessor is wholly unwarranted and uncalled for. Learned senior counsel pointed out that after making in-depth analysis of the evidence produced by the parties, the Special Tribunal and the Special Court categorically held that the land comprised in Survey No.42 of village Khanament, Rangareddy District is Government land and Gonda Mallaiah had illegally occupied a portion thereof and argued that the High Court committed a serious jurisdictional error by interfering with the said finding merely because on re-appreciation of the factual matrix of the case and evidence produced by the parties, a different conclusion could be reached. Learned counsel criticised the High Court's analysis of the documents produced by the parties including notice dated 22.6.1985 issued to one R. Mallaiah under Section 7 of the Encroachment Act and the reply filed by him by pointing out that the observation made by the Special Court that the documents were suspicious in nature did not call for interference by the High Court. Learned counsel also assailed the finding of the High Court that the respondents have acquired title by adverse possession and argued that in the absence of any evidence to show that possession of Gonda Mallaiah and the respondents was continuous and openly hostile to the Government, they cannot be said to have perfected their title over the schedule land.

6. Shri M.N. Rao, learned senior counsel appearing for the respondents repeatedly urged that this Court should not pronounce upon the legality and correctness of the impugned order because the application made by the respondents for assignment of land and/or regularization of their

possession in accordance with policy framed by the Government is pending and is likely to be decided shortly. He then argued that the finding recorded by the High Court in favour of the respondents on the issue of their having acquired title by adverse possession is unassailable because the evidence produced by the parties is sufficient to establish that Gonda Mallaiah and the respondents were in uninterrupted possession of the schedule land for more than 50 years and the proceedings initiated against Gonda Mallaiah under the Encroachment Act were dropped after due consideration of the reply filed by him. Shri Rao submitted that failure of the concerned authorities of the Government to challenge the occupation of land by Gonda Mallaiah and the respondents for more than 50 years is conclusive of the fact that their possession was open and hostile and the High Court did not commit any error by declaring that the respondents have acquired title over the schedule land by adverse possession.

7. We have thoughtfully considered the entire matter. The phenomenon of encroachment, unauthorized occupation and grabbing of public lands is as old as human civilization. From time to time, legislations have been enacted to curb this menace of encroachment. One such legislation i.e. Madras Land Encroachment Act, 1905 was enacted by the legislature of the erstwhile State of Madras. After formation of the State of Andhra Pradesh, necessary changes were made in the nomenclature of the Act and it is now known as the Andhra Pradesh Land Encroachment Act, 1905 (hereinafter referred to as 'the Encroachment Act'). Section 2(1) of the Encroachment Act declares that all public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks and all canals and water-courses, and all standing and flowing water, and all lands except those enumerated in Clauses (a) to

(e) shall be the property of the Government. Section 2(2) further declares that all public roads and streets vested in any local authority shall be deemed to be the property of Government for the purpose of the Act. Section 5 defines liability of person unauthorizedly occupying land and Section 6 prescribes summary procedure for eviction of person unauthorizedly occupying land for which he is liable to pay assessment in terms of Section 3. Section 7 incorporates the rule of audi alteram partem and makes it obligatory for the competent authority to issue notice and give opportunity of hearing to the alleged unauthorized occupant of land being the property of Government. Section 7-A, which was added with effect from 13.5.1980 provides for eviction of encroachment made by group of persons.

8. In some of the proceedings initiated under the Encroachment Act in the State of Andhra Pradesh, the occupants of the land questioned the Government's title over it by contending that they came into possession on the basis of validly executed lease, licence or sale transaction. The Andhra Pradesh High Court ruled that bona fide dispute relating to title of land raised by the occupant cannot be decided in summary proceedings and such dispute can be adjudicated only by a regular civil court. In *Government of Andhra Pradesh v. Thummala Krishna Rao* (1982) 2 SCC 134, this Court approved the view of the High Court and held that the Government cannot take unilateral decision that the property belongs to it and then take recourse to summary remedy under Section 6 of the Encroachment Act for eviction of the occupant.

9. In view of the afore-mentioned development and keeping in mind the fact that there has been large scale grabbing of land belonging to Government, local authorities, religious/charitable institutions including a Wakf and even private lands, the State Legislature enacted the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as 'the Land Grabbing Act') to prohibit every activity of land grabbing in the State and to provide for matters connected therewith. The new legislation deals with all types of land grabbing, public as well as private and provides for a comprehensive mechanism, which is substantially different than the one provided in the Encroachment Act, for eviction of land grabber and adjudication of related disputes without requiring the parties to seek remedy before the regular court. The necessity of bringing the new legislation is clearly reflected in the statement of objects and reasons incorporated in the bill, which led to enactment of the Land Grabbing Act. The same read as under:-

"An Act to prohibit the activity of land grabbing in the State of Andhra Pradesh and to provide for matters connected therewith.

Whereas there are organized attempts on the part of certain lawless persons operating individually and in groups, to grab, either by force or by deceit or otherwise, lands (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private persons) who are known as "land grabbers".

And whereas such land grabbers are forming bogus co-operative housing societies or setting up fictitious claims and indulging in large scale and unprecedented and fraudulent sales and lands belonging to the Government, a local authority, a religious or charitable institution or endowment including a wakf, or private persons, through unscrupulous real estate dealers or otherwise in favour of certain sections of the people resulting in large accumulation of unaccounted wealth and quick money to land grabbers; And whereas, having regard to the resources and influence of the persons by whom, the large scale on which and the manner in which, the unlawful activity of land grabbing was, has been or is being organized and carried on in violation of law by them, as land grabbers in the State of Andhra Pradesh, and particularly in its urban areas, it is necessary to arrest and curb immediately such unlawful activity of land grabbing; And whereas, public order is adversely affected by such unlawful activity of land grabbers."

10. Although, the Land Grabbing Act envisaged constitution of Special Courts, absence of a specific provision making the Code of Civil Procedure and Code of Criminal Procedure applicable to the proceedings before such court enabled the land grabbers to approach the ordinary courts and get the orders of injunction which resulted in frustrating the proceedings initiated under the Land Grabbing Act for their eviction. Therefore, the Governor of the State promulgated the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Ordinance, 1986. The need for amendment is discernible from the statement of objects and reasons, which are reproduced below:-

"Law's 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 Hon'ble Sri Y.V. Chandrachud, Chief Justice, Supreme Court of India, in *In Re. The Special Courts Bill, 1978* 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 evacuees and private persons. 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 proceeding without being driven to duplication, of litigation of course taking care of procedural fairness and natural justice. The Special Court which consists of a serving or retired Judge of a High Court serving or retired District Judges and serving or retired Civil Servants not below the rank of District Collector 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 miscarriage of justice due to non-application of the existing 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."

11. The 1986 Ordinance was replaced by the Andhra Pradesh Land Grabbing (Prohibition) Amendment Act, 1987.

12. We may now notice the relevant provisions of the Land Grabbing Act as amended in 1987. The same are as under:-

"2. Definitions:-

(d) "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 illegal 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.

(e) "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 land to any person on rental or lease and licence as is for construction, or use and occupation, of unauthorised structures; and the term "to grab land" shall be construed accordingly.

3. Land grabbing to be unlawful:- Land grabbing in any form is hereby declared unlawful; and any activity connected with or arising out of land grabbing shall be an offence punishable under this Act.

4. Prohibition of land grabbing:- (1) No person shall commit or cause to be committed land grabbing.

(2) Any person who, on or after the commencement of the Act, continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment including a wakf, or other private person, shall be guilty of an offence under this Act.

(3) Whoever contravenes the provisions of sub-section (1) or sub-section (2) shall, on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend to five years, and with fine which may extend to five thousand rupees.

7. Constitution of Special courts:- (1) The Government may, for the purpose of providing speedy enquiry into any alleged act of land grabbing, and trial of cases in respect of the ownership and title to, or lawful possession of, the land grabbed, by notification, constitute a Special court. 7(5D)(i). Notwithstanding anything in the Code of Civil Procedure, 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.

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:

(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;

(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 the title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land:

8(2). Notwithstanding anything in the Code of Civil Procedure 1908 (Central Act 5 of 1908) 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 Special Court shall be final.

8(6). Every finding of the Special Court 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 Court 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.

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.

15. Act to override other laws:-- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a court of any other tribunal or authority."

13. The Land Grabbing Act was enacted in the backdrop of large scale encroachment and unauthorized occupation of land belonging to Government, local authorities, religious or charitable institutions including Wakf as also the land belonging to private individuals and the fact that the remedy provided under the Encroachment Act was only in respect of Government land and was otherwise found to be wholly insufficient to meet the challenge posed by the menace of land grabbing.

14. Since the basic objective of the Land Grabbing Act is to free the public as well as private land from the clutches of encroachers and unauthorized occupants, the provisions contained therein are required to be interpreted by applying the rule of purposive construction or mischief rule which was enunciated in Heydon's case [(1584) 3 Co. Rep.

7a] and which has been invoked by this Court for construing different legislations. In *Bengal Immunity Company Ltd. v. State of Bihar* 1955 (2) SCR 603, S.R. Das, C.J.I. explained this rule in the following words:-

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case was decided that for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st - What was the common law before the making of the Act, 2nd - What was the mischief and defect for which the common law did not provide, 3rd - What remedy the Parliament hath resolved and appointed to cure the disease of the



commonwealth, and 4th - The true reason of the remedy;

and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."

15. The Land Grabbing Act is a self contained code. It deals with various facets of land grabbing and provides for a comprehensive machinery for determination of various issues relating to land grabbing including the claim of the alleged land grabber that he has a right to occupy the land or that he has acquired title by adverse possession. A reading of the plain language of the definition of land grabber shows that it takes within its fold not only a person or a group of persons who actually commits the act of land grabbing but includes those who give financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures on such land or who collects or attempts to collect from the occupier of such lands rent, compensation and other charges by criminal intimidation. The definition also includes the one who abets the doing of the actual land grabbing or financing the activity of land grabbing, etc. as also successor-in-interest of land grabber. The definition of expression 'land grabbing' is very wide. It covers every activity of grabbing of any land belonging to Government, a local authority, a religious or charitable institution or endowment, including a wakf or even a private person, without any lawful entitlement and with a view to take illegal possession of such lands. The creation of illegal tenancies, lease and licence agreements or any other illegal agreements in respect of or construction of unauthorized structures or sale or hire, etc. are also treated as acts of land grabbing. Section 3 declares land grabbing in any form as unlawful and makes any activity connected with or arising out of land grabbing an offence punishable under the Act. Section 4(1) lays down that no person shall commit or cause to be committed any land grabbing. Section 4(2) lays down that any person who, on or after the commencement of the Act, continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment including a wakf, or other private person, shall be guilty of an offence under the Act. By Section 7(1), the State Government is empowered to constitute a Special Court for expeditiously holding an enquiry into any alleged act of land grabbing and trial of cases in respect of the ownership and title to, or lawful possession of the land grabbed. Section 7-A(1) lays down that every Special Tribunal shall have power to try all cases of which cognizance has not been taken by the Special Court whether before or after the commencement of the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987. Section 7-A(2) lays down that a Special Tribunal shall, save as otherwise provided in the Act, follow the procedure prescribed in the Code of Civil Procedure (CPC) in the trial of cases under the Act. Section 7-A(3) provides for an appeal against any judgment or order except an interlocutory order, to the Special Court on any question of law or of fact. By virtue of Section 8(1), the Special Court is empowered to either suo moto, or on an 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 the Act and pass appropriate orders including by way of interim directions. Section 8(2) contains a non obstante clause and gives finality

to the decision of the Special Court and the provisions of the CPC and the Code of Criminal Procedure (CrPC) shall, insofar as they are not inconsistent with the provisions of the Act, apply to the proceedings before the Special Court. By Section 9, the provisions of the CPC and Code of Criminal Procedure have been made applicable to the proceedings of the Special Court except insofar as they are not inconsistent with the provisions of the Act. This Section also declares that a Special Court shall be deemed to be a Civil Court or, as the case may be, as the Court of Sessions and shall have the powers of a Civil Court and a Court of Sessions. Section 10 contains special rule of burden of proof. It lays down that where there is an allegation of land grabbing and the land which is subject matter of grabbing is prima facie proved to be owned by the Government or by a private person, the Special Court/Special Tribunal shall presume that the person who is alleged to have grabbed the land is a land grabber and it is for him to prove the contrary.

16. As happens with several other statutes, the provisions of the Land Grabbing Act have also become subject of judicial debate and interpretation and in some judgments apparently conflicting views have been expressed necessitating consideration by a larger Bench. The ambit and scope of the definitions of 'land grabbers' and 'land grabbing' was considered by a two-Judge Bench of this Court in *Konda Lakshmana Bapuji v. Govt. of A.P.* 2002 (3) SCC 258. The facts of that case were that on the strength of an unregistered agreement for perpetual lease executed by one of the successors of the Inamadar Shri Mohd. Noorudin Asrari, the appellant claimed his title over the land comprising of various parts of Survey No.9 of village Khairathabad, Golconda Mandal, Hyderabad District. Later, Shri Asrari is said to have executed a registered perpetual deed in favour of the appellant. Another person named Rasheed Shahpurji Chenoy also claimed the same piece of land. He filed a suit in the Court of Additional Chief Judge, City Civil Court, Hyderabad. The trial Court dismissed the suit by recording a finding that the suit land was a Government land and the plaintiff did not have any title over it. As a sequel to this, Tehsildar, Hyderabad initiated proceedings against the appellant and passed an order on 28.5.1977 for his eviction. The appellant challenged that order by filing a writ petition in the High Court. The learned Single Judge allowed the writ petition. During the pendency of writ appeal preferred by the respondents, the Land Grabbing Act came into force. However, this was not brought to the notice of the Division Bench, which opined that there was bona fide dispute of title, which must be adjudicated by the ordinary court of law. Accordingly, the writ appeal was dismissed. The appellant filed another writ petition against his threatened dispossession. The same was disposed of by the learned Single Judge by taking note of the observations made by the Division Bench and the fact that the Government had already filed suit in the Court of IV Additional Judge, City Civil Court, Hyderabad for declaration of title and recovery of possession. Later on, the suit was transferred to the Special Court, which ruled against the appellant. The order of the Special Court was upheld by the Division Bench of the High Court. Before this Court it was argued that the appellant could not be treated as a land grabber because he was in permissive possession and that he was having a bona fide claim to the property in dispute as held by the High Court in Writ Petition No.1414 of 1977 and Writ Appeal No.61 of 1978. The second contention urged on behalf of the appellant was that the Special Court had no jurisdiction to try the case. The last contention was that the appellant had perfected his title to the land in dispute by adverse possession. This Court analysed the definitions of 'land grabber' and 'land grabbing', referred to the dictionary meaning of the term 'grab' and observed:

"The various meanings noted above, disclose that the term "grab" has a broad meaning -- to take unauthorisedly, greedily or unfairly -- and a narrow meaning of snatching forcibly or violently or by unscrupulous means. Having regard to the object of the Act and the various provisions employing that term we are of the view that the term "grab" is used in the Act in both its narrow as well as broad meanings. Thus understood, the ingredients of the expression "land grabbing"

would comprise (i) the factum of an activity of taking possession of any land forcibly, violently, unscrupulously, unfairly or greedily without any lawful entitlement, and (ii) the mens rea/intention -- "with the intention of/with a view to" (a) illegally taking possession of such lands, or (b) enter into or create illegal tenancies, lease and licence agreements or any other illegal agreements in respect of such lands, or (c) to construct unauthorised structures thereon for sale or hire, or (d) to give such lands to any person on

(i) rental, or (ii) lease and licence basis for construction, or (iii) use and occupation of unauthorised structures. A combined reading of clauses (d) and (e) would suggest that to bring a person within the meaning of the expression "land grabber" it must be shown that: (i)(a) he has taken unauthorisedly, unfairly, greedily, snatched forcibly, violently or unscrupulously any land belonging to the Government or a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person; (b) without any lawful entitlement; and (c) with a view to illegally taking possession of such lands, or enter 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 unauthorised structures; or (ii) he has given financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon; or (iii) he is collecting or attempting to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation; or (iv) he is abetting the doing of any of the abovementioned acts; or (v) that he is the successor-in-interest of any such persons."

The Court then considered the question whether a person prima facie claiming title over the land alleged to have been grabbed can also be treated as covered by the expression 'land grabber' and answered the same in the following words:

"In regard to the ingredients of the expression "land grabber", it is necessary to point out that it is only when a person has lawful entitlement to the land alleged to be grabbed that he cannot be brought within the mischief of the said expression. A mere prima facie bona fide claim to the land alleged to be grabbed by such a person, cannot avert being roped in within the ambit of the expression "land grabber". What is germane is lawful entitlement to and not a mere prima facie bona fide claim to the land alleged to be grabbed. Therefore, the observation of the Division Bench of the High Court in the said Writ Appeal No. 61 of 1978 that the appellant can be taken to have prima facie bona fide claim to the land in dispute which was relevant for the said Land Encroachment Act, cannot be called in aid as a substitute for lawful entitlement to the land alleged to be grabbed, which alone is relevant under the Act."

(emphasis supplied)

17. In *Gouni Satya Reddi v. Govt. of A.P. and others* 2004 (7) SCC 398, another two-Judge Bench appears to have expressed a slightly different view. The appellant in that case claimed to have purchased the land in dispute by a registered sale deed executed on behalf of respondent No.3 by his General Power of Attorney holder, S. Prabhakar Rao. Before starting construction, he obtained permission from the competent authority. One Tirupathiah claiming to be General Power of Attorney holder of respondent No.3 objected to the construction by asserting that the earlier General Power of Attorney holder of respondent No.3 had no right to transfer the property. Thereupon, the appellant filed a suit for injunction. An order of status quo was passed. Tirupathiah also filed a suit. The trial Court finally decreed the suit of the appellant and dismissed the one filed by Tirupathiah. Thereafter, the appellant filed suit before the Special Court for restraining Tirupathiah from interfering with his possession. The Special Court did not believe the appellant's case that he had purchased the property from S. Prabhakar Rao and dismissed the suit. While allowing the appeal preferred against the order of the Special Court, this Court referred to the definitions of land grabber and land grabbing and ruled that the appellant cannot be treated as land grabber because he was not aware of the fact that he was entering into possession illegally and without lawful entitlement.

18. In *Mahalaxmi Motors Ltd. v. Mandal Revenue Officer and others* 2007 (11) SCC 714, yet another Bench of two-Judges held that a mere allegation of land grabbing is sufficient to invoke the jurisdiction of the Special Court and that civil court's jurisdiction is ousted in all matters which fall within the jurisdiction of Special Court. The Bench referred to judgments in *Konda Lakshmana Bapuji v. Govt. of A.P.* (supra), *Gouni Satya Reddi v. Govt. of A.P. and others* (supra) and observed:

"Lawful entitlement on the part of a party to possess the land being the determinative factor, it is axiomatic that so long as the land grabber would not be able to show his legal entitlement to hold the land, the jurisdiction of the Special Court cannot be held to be ousted.

The Bench in *Konda Lakshmana Bapuji* has applied both the broader and narrow meanings of the said expression. It would not, however, mean that all the tests laid down therein are required to be satisfied in their letter and spirit. What is necessary to be proved is the substance of the allegation. The proof of intention on the part of a person being his state of mind, the ingredients of the provisions must be considered keeping in view the materials on records as also circumstances attending thereto. What would be germane for lawful entitlement to remain in possession would be that if the proceedee proves that he had bona fide claim over the land, in which event, it would be for him to establish the same.

In *Konda Lakshmana Bapuji* this Court has categorically held that the requisite intention can be inferred by necessary implication from the averments made in the petition, the written statement and the depositions of witnesses, like any other fact. The question which must, therefore, have to be posed and answered having regard to

the claim of the land grabber would be that, if on the face of his claim it would appear that he not only had no title, but claimed his possession only on the basis thereof, the same must be held to be illegal. The question in regard to lawful entitlement of the proceedee, therefore, for invoking the charging section plays an important and significant role.

We would like to add that the person's purported belief that he is legally entitled to hold the land and his possession is not otherwise illegal must also be judged not only from the point of time when he entered into the possession or when he had acquired the purported title but also from the point of view as to whether by reason of determination of such a question by a competent court of law, he has been found to have no title and consequently continuance of his possession becomes illegal. If the proceedee against whom a proceeding has been initiated under the provisions of the said Act is entitled to raise the question of adverse possession, which being based on knowledge of a lawful title and declaration of the hostile title on the part of the person in possession, there does not appear to be any reason as to why knowledge of defect in his title and consequently his possession becoming unlawful to his own knowledge would not come within the purview of the term "land grabbing" as contained in Section 2(e) of the Act. The provisions of the Act must be construed so as to enable the tribunal to give effect thereto. It cannot be construed in a pedantic manner which if taken to its logical corollary would make the provisions wholly unworkable. Only because a person has entered into possession of a land on the basis of a purported registered sale deed, the same by itself, in our considered opinion, would not be sufficient to come to the conclusion that he had not entered over the land unauthorisedly, unfairly, or greedily."

(emphasis supplied)

19. From the above extracted observations made in *Mahalaxmi Motors Ltd. v. Mandal Revenue Officer and others* (supra), it is clear that the Bench unequivocally approved the ratio of *Konda Lakshmana Bapuji v. Govt. of A.P.* (supra) and though not stated in so many words, it did not agree with the ratio of the judgment in *Gouni Satya Reddi v. Govt. of A.P. and others* (supra), which was decided without noticing the earlier judgment in *Konda Lakshmana Bapuji v. Govt. of A.P.* (supra).

20. *N. Srinivasa Rao v. Special Court* 2006 (4) SCC 214 is also a judgment rendered by a two-Judge Bench on the scope of the Special Court's jurisdiction to decide the question whether the alleged land grabber has acquired title by adverse possession. Without noticing the earlier judgment of the coordinate Bench in *Konda Lakshmana Bapuji v. Govt. of A.P.* (supra), the two-Judge Bench held that the Special Court constituted under Section 7 of the Land Grabbing Act does not have the jurisdiction to decide questions relating to acquisition of title by adverse possession in a proceeding under the Act and the same would fall within the domain of the civil courts. The Bench further held that the learned Special Judge travelled beyond the jurisdiction vested on him under the 1982 Act in deciding that even if the provisions of Section 47 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 were a bar to the transfer of land without the sanction of Tehsildar,

the occupants of land had perfected their title by way of adverse possession.

21. In view of the conflicting opinions expressed by the coordinate Benches, the matter was referred to a larger Bench. In *V. Laxminarasamma v. A. Yadaiah (dead) and others* 2009 (5) SCC 478, the three-Judge Bench approved the view expressed in *Konda Lakshmana Bapuji v. Govt. of A.P.* (supra) that the Tribunal and Special Court constituted under the Land Grabbing Act has the jurisdiction to go into the question of acquisition of title by adverse possession and disapproved the subsequent judgment in *N. Srinivasa Rao v. Special Court* (supra). While doing so, the three-Judge Bench also distinguished an earlier judgment rendered in *Government of Andhra Pradesh v. Thummala Krishna Rao* (supra) wherein the provisions of the Encroachment Act were considered and observed:

"In that case, the principal question, which arose for consideration, was as to whether the property in question which was in possession of the family of one Habibuddin for a long time and, thus, the same had not vested in the Government by reason of a land acquisition proceeding initiated for acquisition of the land for Osmania University. In that case, Osmania University filed a suit for possession which was dismissed on the premise that Habibuddin had perfected his title by adverse possession. Thereafter Osmania University requested the Government of Andhra Pradesh to take steps for summary eviction of the persons who were not in authorised occupation of the said plots. The observations made therein must be held to have been made in the aforementioned factual matrix. It is one thing to say that a summary proceeding cannot be resorted to when a noticee resists a bona fide dispute involving complicated questions of title and his right to remain in possession of the land but it is another thing to say that although a Special Court and/or a Tribunal which has all the powers of a civil court would not be entitled to enter into such a contention. Krishna Rao, therefore, in our opinion has no application to the facts of the present case."

22. In the light of the above analysis of the relevant provisions of the Land Grabbing Act and law laid down by this Court, we shall now consider whether the Division Bench of the High Court was justified in interfering with the orders passed by the Special Tribunal and Special Court for eviction of the respondents.

23. While deciding the application filed by the appellant, the Special Tribunal referred to the oral as well as documentary evidence produced by the parties including khasara pahani (Ex.A-2) in which the schedule land is recorded in the name of the Government, sketch of the suit land (Ex.A-7) and held that the land belongs to the Government. The Special Tribunal further held that filing of application by Gonda Malliah for assignment of land by being treated as landless poor is also indicative of the fact that the land belongs to the Government. The plea of the respondents that they have perfected title by long possession was rejected by the Special Tribunal by making the following observations:

(i) The documents produced by the respondents are only xerox copies of the notices issued to them from 1965 onwards and the same were not sufficient to establish their open and uninterrupted possession for 30 years, and

(ii) The respondents' claim that their possession was open and hostile to the Government is demolished by the fact that they themselves applied to the Government for assignment of the land occupied by them.

24. The Tribunal further held that the factum of development of land for making it cultivable by Gonda Mallaiah does not entitle the respondents to claim right over the land and that their plea for assignment cannot be accepted in the proceedings under the Land Grabbing Act. Accordingly, the Tribunal directed the respondents to hand over possession of the land to the Government.

25. The Special Court minutely considered the entire evidence produced by the parties and held that the land in question is Government land and that Gonda Mallaiah and the respondents are land grabbers. The Special Court referred to Khasra Pahanis for the period from 1959 to 1989 in which the land is recorded in the name of the Government and held that the respondents are not entitled to any right over it merely because they have been cultivating the same. The Special Court doubted the authenticity of the documents produced by the respondents and rejected their plea of having perfected title by adverse possession by making the following observations:

"Even otherwise on the evidence on record we are not satisfied that the respondents establishment title by adverse possession. The documents filed in support of their plea of adverse possession are xerox copies of the notices said to have been issued under Section 7 of the Land Encroachment Act. Ex.B.3 is one such notice dated 8.8.1962. Ex.B.3 is a Xerox copy of the notice. Ex.B.3 does not inspire any confidence as a true one. There is no signature above the word 'Tahasildar'. The Sy. No. is stated to be 42 but is not clear. The extent is said to be Ac.1-07 gts. Even we come to Ex.B4 which is said to be a notice under Section 7 of the Land Encroachment Act, we find Sy. No.64 and the extent is 20 guntas only. This is also a Xerox copy. When we come to the next notice which is Ex.B-5 dated 21.2.1969 purported to have been issued under Section 7 of the Land Encroachment Act, we find Sy. No.42, but the extent is mentioned as Ac.2.00. We do not find any details clearly in the notice. The xerox copies are not all legible. One important fact which has to be looked into is that some signature and the date 21.2.1969 are very clear when the other recitals are not at all legible. The total extent of the Sy. No. is not mentioned in the relevant column. The person who signed the notice or other details are sadly lacking. The next notice is Ex.B-6 dated 22.6.1985. This is also a xerox copy. To whom the notice is issued is not clearly legible. But above the word "R/o name of Mallaiah appears" but the surname is totally different. It is not Gundla Mallai, but it is totally different. Here in this xerox copy the total extent of the Sy. No. is shown as Ac 18-18 gts, but the figures are tampered with and that is clear even to a naked eye. The land in the occupation of the person is mentioned in the relevant column as Ac.7-12 gts. Ex.B-7 is the reply to Ex.B-6 notice. The reply is submitted by Rakathapu Mallaiah, son of Venkaiah, not by

the father of the respondents Goundla Mallaiah. Therefore, it is not clear whether the notice Ex.B-7 was issued to the father of the respondents or not. It is true that the matter relates to the petition schedule property. It is interesting to see in the reply Ex.B-7 that the respondents stated that they have perfected title by adverse possession and that the provisions of Land Encroachment Act are inapplicable. The first respondent as R.W.1 stated in his evidence that his father submitted all the original records along with his explanation dated 4.4.1986, that is, Ex.B-1, and therefore the originals are not forthcoming. We are not satisfied with the ipse-dixit of the witness. The xerox copies do not inspire any confidence in us as being true copies of the originals. It is true that when we come to Ex.B-1 notice issued in the month of March, 1986 a reply was given by the respondents' father/G. Mallaiah. We have referred to the statement contained therein in the fore-going paragraphs wherein he requested that the necessary recommendations may be made to the competent officer to grant patta to the petition schedule property. Therefore, we are not inclined, for the reasons mentioned above, that the earlier documents Exc. B-3 to 5 are genuine. If we eschew Exs.B-3 to B-5 there is absolutely no evidence to show that Sri. G. Mallaiah, the father of the respondents and the respondents have been in possession of the petition schedule property prior to 1970. The documents filed in support of their plea of adverse possession viz., Exs.B-8 to B-80 relate to a period from 15.12.1977 to the date of the filing of the petition or even thereafter. The documents do not clearly relate to the petition schedule property and they are all xerox copies only. Originals have not been produced before the Court. Even if there documents Exs. B-19 to 25 are taken into consideration, they do not establish the possession of the respondents or their predecessors in title prior to 1977. The said period will not satisfy the required period prescribed for acquiring title by adverse possession. Therefore, we are not inclined in accordance with law invoking the provisions of Act XII/1982, it cannot be said that its action is either arbitrary or capricious."

(underlining is ours)

26. The Special Court then considered the respondents' plea that dropping of proceedings under the Encroachment Act amounts to permitting them to continue possession and rejected the same by relying upon the judgment of this Court in Government of Andhra Pradesh v. Thummala Krishna Rao (supra). Likewise, the plea of the respondents that their possession was permissive and they cannot be treated as land grabbers because they are in occupation of the land for many decades and are paying the land assessment was rejected by the Special Court by relying upon order dated 15.12.1994 passed in LGC No.106/1989 in which it was held that in view of Rule 2 of the Andhra Pradesh (Telangana Area) Land Revenue Rules, any person desiring to take up un-occupied land is required to submit an application to the Tehsildar and he shall not enter upon the land without obtaining written permission from the Tehsildar and that any person entering into possession without such permission cannot claim to be Sivaijamaidar. The Special Court opined that the possession of the respondents cannot be treated as permissive because notices Ex.B-2 and Ex.B-6 were issued to them before filing application under the Land Grabbing Act and in any case, their plea of permissive possession was destructive of their claim of having acquired title by adverse



possession.

27. During the pendency of the writ petition, the Division Bench of the High Court appointed two sets of Advocate Commissioners to ascertain the nature of the schedule land, considered their reports and concluded that land occupied by Gonda Mallaiah and his successors is an agricultural land. The High Court observed that the respondents herein are in possession and enjoyment of the land for last many years and silence on the part of the concerned authorities right from 1959 up to the filing of petition before the Special Tribunal in 1990 clearly indicates that they were satisfied with the stand of the respondents and their predecessor that they are entitled to assignment of the schedule land by being treated as landless poor. The High Court was of the view that if the authorities were serious to evict Gonda Mallaiah or the respondents then they would have taken appropriate steps and would not have allowed them to continue in possession for more than 50 years and collected revenue from them. The High Court then considered the respondents' plea of having acquired title by adverse possession, referred to some judicial precedents on the subject and held:

"The evidence produced by the State itself clearly established that the petitioners have perfected their title over the schedule I and 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."

28. The High Court then referred to the often quoted judgment of this Court in Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 SC 477 on the scope of the writ of certiorari and concluded:

"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."

29. In our view, even though by making reference to the judgment of this Court in Syed Yakoob v. K.S. Radhakrishnan and others (supra), the High Court has given an impression that it was aware of

the limitations of certiorari jurisdiction under Article 226 of the Constitution of India, a critical analysis of the impugned order makes it clear that the High Court exceeded its jurisdiction and committed serious error by interfering with the well articulated and well reasoned concurrent findings recorded by the Special Tribunal and the Special Court that Gonda Mallaiah had illegally occupied the Government land and after his death, the respondents continued with the illegal possession and as such they were liable to be treated as land grabbers within the meaning of Section 2(d) of the Land Grabbing Act and that they have failed to prove that their possession was open and hostile to the Government so as to entitle them to claim title over the schedule land by adverse possession. The respondents did not produce any affirmative evidence before the Special Tribunal regarding the point of time when Gonda Mallaiah occupied the land and started cultivation. Instead, they relied upon the notices issued under Section 7 of the Encroachment Act and pleaded that the proceedings initiated under that Act will be deemed to have been dropped because no order was passed for eviction of their father by treating him an encroacher of the Government land. The Special Court has considered this issue in detail and assigned cogent reasons for doubting the authenticity of the documents produced by the respondents in support of their plea. The High Court completely overlooked the observations made by the Special Court on this issue and decided the case by presuming that the competent authority had taken a conscious decision to allow Gonda Mallaiah to continue his occupation of the Government land. In our considered view, the approach adopted by the High Court was ex-facie erroneous because absence of final order in the proceedings initiated under the Encroachment Act cannot lead to an inference that the concerned authority had recognized the possession of Gonda Mallaiah over the schedule land. That apart, even if this Court was to presume that the proceedings initiated against Gonda Mallaiah under the Encroachment Act had been dropped, the said presumption cannot be over stretched for entertaining the respondents' claim that their possession was open and hostile qua the true owner i.e. the Government. The payment of land revenue by Gonda Mallaiah and/or the respondents and making of applications by them to the Government for assignment of the schedule land or regularisation of their possession, completely demolish their case that their possession was open and hostile and they have acquired title by adverse possession. In this context, it is necessary to remember that it is well nigh impossible for the State and its instrumentalities including the local authorities to keep every day vigilance/watch over vast tracts of open land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the State apparatus for getting their occupation/possession and construction regularized. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the Court is duty bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give upper hand to the encroachers, unauthorised occupants or land grabbers.

30. In *State of Rajasthan v. Harphool Singh (Dead) through Lrs.* 2000 (5) SCC 652, this Court considered the question whether the respondents had acquired title by adverse possession over the suit land situated at Nohar-Bhadra Road at Nohar within the State of Rajasthan. The suit filed by the respondent against his threatened dispossession was decreed by the trial Court with the finding that he had acquired title by adverse possession. The first and second appeals preferred by the State

Government were dismissed by the lower appellate Court and the High Court respectively. This Court reversed the judgments and decrees of the courts below as also of the High Court and held that the plaintiff-respondent could not substantiate his claim of perfection of title by adverse possession. Some of the observations made on the issue of acquisition of title by adverse possession which have bearing on this case are extracted below:-

"So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none. The decision in *P. Lakshmi Reddy v. L. Lakshmi Reddy* adverted to the ordinary classical requirement

-- that it should be *nec vi, nec clam, nec precario* -- that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus."

31. A somewhat similar view was expressed in *A.A. Gopalakrishnan v. Cochin Devaswom Board* 2007 (7) SCC 482. While adverting to the need for protecting the properties of deities, temples and Devaswom Boards, the Court observed as under:-

"The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebait/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

32. Before concluding, we may notice two recent judgments in which law on the question of acquisition of title by adverse possession has been considered and reiterated. In *Annakili v. A. Vedanayagam* 2007 (14) SCC 308, the Court observed as under:-

"Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled

principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title."

33. In *P.T. Munichikkanna Reddy v. Revamma* 2007 (6) SCC 59, the Court considered various facets of the law of adverse possession and laid down various propositions including the following:

"Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile."

"To assess a claim of adverse possession, two-pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially "wilful neglect" element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.
2. Specific positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper-owner, to the adverse possessor.

Right thereby accrues in favour of adverse possessor as intent to dispossess is an express statement of urgency and intention in the upkeep of the property."

34. In view of above discussion, we hold that the respondents miserably failed to establish that they had acquired title over the schedule land by adverse possession and the High Court was not at all justified in upsetting the orders passed by the Special Tribunal and Special Court.

35. In the result, the appeal is allowed, the impugned order is set aside and the writ petition filed by the respondents before the High Court is dismissed. As a corollary, the orders passed by the Special Tribunal and the Special Court shall stand automatically restored. Within two months from today, the respondents shall hand over vacant possession of the schedule land to an officer not below the rank of Additional Collector, who shall be nominated by District Collector, Rangareddy District. Needless to say that if the respondents fail to hand over vacant possession of the schedule land to the officer nominated by the District Collector then he shall take possession of the land and, if necessary, use appropriate force for that purposes.

36. With a view to ensure that the respondents are not able to manipulate the State apparatus for continuing their illegal occupation of schedule land in question, we direct the Government of Andhra Pradesh and its functionaries not to regularise their possession. The respondents shall also not be entitled to invoke jurisdiction of any court including the High Court for securing an order which may result in frustrating implementation of this Court's order.

.....J. [G.S. Singhvi] .....J. [Asok Kumar Ganguly] New  
Delhi 06 January, 2010