

Dr. Kazimunnisa (Dead) By Lr. vs Zakia Sultana (Dead) By Lr. on 15 November, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5357, 2018 (11) SCC 208, (2018) 1 ICC 1095, (2018) 1 CIVILCOURTC 552, (2017) 13 SCALE 485, (2018) 1 MAD LW 456, (2018) 1 ANDHLD 148, (2018) 1 WLC(SC)CVL 300, (2018) 181 ALLINDCAS 258 (SC), 2018 (129) ALR SOC 50 (SC)

Author: Abhay Manohar Sapre

Bench: Abhay Manohar Sapre, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL Nos. 18783-18784 OF 2017
(ARISING OUT OF SLP (C) Nos.1401-1402/2015)

Dr.Kazimunnisa (Dead)
By L.R.

...Appellant(s)

VERSUS

Zakia Sultana (Dead)
By L.R.& Ors.

...Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1) Leave granted.

2) These appeals are filed against the final judgment and order dated 17.09.2014 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Writ Petition No. 15055 of 2004 and Writ Petition No. 27567 of 2008 whereby the Division Bench allowed Writ Petition No.15055 of 2004 by reversing the judgment dated 16.06.2004 of the Special Court in LGC No.41 of 1998 and dismissed Writ Petition No. 27567 of 2008 while confirming the judgment dated 23.10.2008 of the Special Court in LGC No.50 of 2004.

- 3) In order to appreciate the issues involved in these two appeals, few relevant facts need mention.
- 4) The dispute in these appeals relate to land bearing old Survey No. 129 (new Survey No. 358), T.S. Nos.1/3 and 5/3 situated at Banjara Hills, Hyderabad (hereinafter referred to as the "suit land").
- 5) The questions, which broadly fall for consideration in these appeals are, first, who is/are the owner(s) of the suit land and, if so, on what basis and of which portion and for how much area; Second, who is/are in possession of the suit land and of how much area and of which portion and since when and whether their possession has been legal on such area and, if so, its basis and whether they or any of them have, at any point of time, encroached upon any parcel of suit land to the detriment of its owner's interest and, if so, to what extent, they encroached and since when ?
- 6) These questions have to be decided in the light of the relevant provisions of The Andhra Pradesh Land Grabbing (Prohibition) Act, 1982(hereinafter referred to as "the Act").
- 7) Two cases were filed by the respondents through power of attorney holder against the appellant herein before the Special Court under Section 8 of the Act for claiming possession of the portion of the suit land.
- 8) One case was filed on 02.01.1998, i.e., (LGC No.41/1998) whereas the other was filed on 15.04.2004,i.e.,(LGC No.50/2004). So far as LGC No. 50/2004 is concerned, it was filed two months prior to the disposal of first case, i.e., LGC No. 41/1998.
- 9) So far as LGC No.41/1998 is concerned, it was filed against Kazimmunisa (since dead and now represented by her legal representative-appellant herein) as non-applicant No. 1, District Collector, Ranga Reddy District as non applicant No. 2 and the Special Officer,Urban Land Ceiling, Hyderabad as non applicant No. 3.
- 10) So far as LGC No. 50/2004 is concerned, it was filed only against Kazimmunisa and her family member as non-applicant No. 1 (now represented by her legal representative).
- 11) In other words, in LGC No.50/2004, District Collector, Ranga Reddy Dist. and Special Officer, Urban Land Ceiling, Hyderabad were not impleaded as non-applicants though both these State authorities were impleaded in LGC No. 41/1998 as non-applicant Nos. 2 and 3.
- 12) So far as LGC No. 41/1998 is concerned, the application was founded on the allegations that the respondents are the owners of the suit land. The respondents, in support of their claim of ownership over the suit land traced their title through some documents of title of their predecessor-in-title, entries in the revenue records and other documentary evidence and on the basis of these documents, alleged that their title over the suit land including portion of the suit land is prima facie established as against the appellant.
- 13) The respondents then alleged that the original appellant herein (non-applicant No. 1 in the case) illegally and without any lawful title and authority has encroached upon a portion of the suit land of

which the respondents are the owners and hence under the provisions of the Act, the respondents have become entitled to claim possession of the illegally encroached portion of the suit land from the appellant which essentially belonged to them.

14) The appellant (non-applicant No. 1) denied the respondents' case and contended that, firstly, the respondents are not the owners of the portion of the suit land; Secondly and on the other hand, the appellant is the lawful owner of portion of the suit land; Thirdly, the appellant has been in lawful possession of the said portion of the suit land as owner thereof; Fourthly, the appellant has not encroached upon any portion of the suit land as alleged by the respondents. The appellant(non-applicant No.1), in support of her case, also filed documents of title, revenue entries and other documents.

15) So far as the District Collector (non-applicant No. 2) is concerned, he also filed the written statement(counter affidavit) on behalf of the State. He also denied the respondents' claim including the respondents' title over the suit land. He found fault in the title traced by the respondents' over the suit land and contended that the respondents have not been able to establish their prima facie title over the suit land. He then alleged that the Government record does not support the respondents' case and nor the facts stated in the application by the respondents tracing their title tally with the Government's record.

16) Parties then adduced evidence. The Special Court, by order 16.06.2004, dismissed the respondents' application finding no merit therein.

17) So far as LGC No. 50/2004 is concerned, it was in relation to another portion of the same suit land. This application was also based on somewhat identical averments on which LGC No. 41/1998 was founded for claiming relief therein. The respondents, as mentioned above in LGC 50/2004, impleaded only the original appellant as non-applicant No.1 but neither impleaded the District Collector nor the Special Officer Urban Land Ceiling, Hyderabad as non-applicant along with the appellant.

18) The original appellant herein filed written statement in (LGC No. 50/2004) and denied the respondents' claim. She took the same defense, which she had taken in LGC No. 41/1994 to prove her ownership over the portion of the suit land. She also raised the plea of Order 2 Rule 2 of the Code of Civil Procedure 1908 (hereinafter referred to as "the Code") and also raised the plea of limitation.

19) By order dated 23.10.2008, the Special Court allowed this application (LGC No.50/2004) and held that the applicants(respondents herein) are prima facie the owners of the portion of the suit land, which has been in possession of the appellant. It was held that the original appellant herein was neither able to rebut the case of respondents as per Section 10 of the Act by proving their prima facie legal title over the suit land nor legal possession over the portion of the suit land and, therefore, she is held as "land grabber" in relation to the land in her possession under the Act and, hence, she is liable to restore the portion of the suit land which is held to be in her illegal possession to the applicants(respondents herein).

20) The appellant, felt aggrieved of the judgment of the Special Court dated 23.10.2008 passed in LGC No.50/2004, filed writ petition under Article 227 of the Constitution of India whereas the respondents felt aggrieved of the order dated 16.04.2004 passed in LGC No. 41/1994 also filed writ petition in the High Court.

21) The High Court clubbed both the writ petitions. By common impugned judgment, the High Court allowed the writ petition filed by the respondents, set aside the judgment dated 16.04.2004 passed in LGC No.41/1994 and, in consequence, allowed their application and, in consequence, dismissed the writ petition filed by the appellant against the judgment dated 23.10.2008 passed in LGC No. 50/2004 and affirmed the judgment of Special Court dated 23.10.2008.

22) The effect of the impugned judgment of the High Court is that both LGCs, i.e., 41/1994 and 50/2004 filed by the respondents against the appellant stand decreed in relation to the respective suit land involved in both the applications and the original appellant herein has to restore the possession of the portion of the suit lands which is in her possession to the respondents.

23) Felt aggrieved, the original appellant has challenged the impugned common judgment of the High Court by way of appeal by special leave before this Court.

24) Heard Mr. Huzefa Ahmadi, learned senior counsel for the appellant and Mr. Basava Prabhu Patil, learned senior counsel for respondent Nos.3,7 and 8, Mr. Shanti Bhushan, learned senior counsel for respondent No.2 and Mr. P. Venkat Reddy, learned counsel for respondent Nos.4 & 5.

25) Having heard the learned senior counsel for the parties at length and on perusal of their written submissions and the record of the case, we are inclined to allow the appeals in part and while setting aside of the impugned judgment of the High Court and also of the Special Court in both the cases (L.G.C. Nos.41/1994 and 50/2004) remand both the LGCs to Special Court for their disposal afresh on merits in accordance with law as indicated below.

26) In our considered opinion, the need to remand the aforementioned two LGCs to the Special Court is considered necessary due to the following reasons.

27) First, we find that the trial of the two cases before the Special Court was not satisfactory inasmuch as when admittedly two LGCs (41/1994 and 50/2004) arising between the same parties and in relation to the same piece of suit land were filed for grant of identical reliefs under the Act then, in our view, both the cases should have been clubbed together for their disposal on merits in accordance with law to avoid any conflicting decision in both the cases.

28) It was more so when both the cases were capable of being clubbed together because both were pending though filed one after the other, neither the parties nor the Courts below took note of this with the result, the same resulted in passing two conflicting orders - one was decreed and the other suffered dismissal. This recourse adopted by the Court below caused prejudice to the parties and, especially, to the party who lost the case.

29) Indeed, in our view, this was an appropriate case where the provisions of Order II Rule 3 of the Code, which deals with joinder of causes of action, could have been resorted to by the Court suo moto for clubbing the two cases as the facts involved in both the cases satisfied the attributes of Order II Rule 3 of the Code.

30) Second, we find that the case which was filed first, i.e., (L.G.C.No.41/1994), the District Collector and the Special Officer, Urban Land Ceiling, Hyderabad were rightly made parties

-non-applicants by the respondents whereas in other case, i.e., (L.G.C. No.50/2004) filed subsequently, both the State authorities were not made parties for the reasons best known to the respondents.

31) In our opinion, these two State authorities should also have been arrayed as non-applicants in the second case, i.e., LGC No. 50/2004 like the earlier one to maintain parity in both the cases. The parties so also the Courts below overlooked this aspect though material for the proper disposal of both the cases.

32) Third, we find that though the District Collector filed his counter affidavit in first case (LGC No.41/1994) in which he not only denied the respondents' title but also pointed out as to who was the original owner of the suit land but neither the respondents countered these averments nor the District Collector adduced any evidence to prove the averments.

33) Similarly, no counter affidavit was filed in second case (LGC 50/2004) by the District Collector because he was not made party in the case. This was another infirmity in the trial of both the cases, which resulted in passing conflicting decisions in both the cases.

34) This was neither noticed by the Special Court nor High Court which resulted in recording reversing finding on the same set of facts and evidence.

35) Fourth, we also find that the issue of maintainability of application and also issue of limitation in filing the two applications by the respondents under the Act should also have been decided along with other issues.

36) Lastly, we find that the High Court while reversing the findings of the Special Court decided the writ petition under Article 227 like a first Appellate Court by appreciating the entire evidence little realizing that the jurisdiction of the High Court while deciding the writ Petition under Article 227 is not akin to appeal and nor it can decide the writ petition like an Appellate Court.

37) The writ petition, in our opinion, should have been decided by the High Court keeping in view the scope and ambit of Article 227 for its exercise as explained by this Court consistently in series of decisions while examining the legality and correctness of judgment of Special Court impugned in the writ petition.

38) In the light of aforementioned five reasons, we have formed an opinion that the trial in both the cases was unsatisfactory inasmuch as it caused prejudice to the parties and especially to the one who lost the case. It is for these reasons, we do not consider it proper to probe at this stage the entire factual issues argued by the learned counsel for the parties at great length with reference to the pleadings and the evidence of the parties. We also do not consider it proper to record any finding on merits either way and leave the parties to contest the case before the Special Court de novo on merits.

39) In view of foregoing discussion, the appeals succeed and are allowed in part. The impugned judgment as also that of the Special Court are set aside.

40) As a consequence, both the cases, i.e., LGC Nos.41/1994 and 50/2004 are restored to their respective files before the Special Court. It is directed that both the cases be clubbed together for their disposal on merits. It is further directed that the District Collector and the Special Officer, Urban Land Ceiling, Hyderabad would also be made party respectively. These two newly added non-applicants in LGC No. 50/2004 are afforded an opportunity to file their counter affidavits in LGC No.50/2004.

41) All the parties in both the cases are also afforded an opportunity to amend their pleadings in case, if they so consider it proper and also file any additional evidence both oral and documentary in addition to what has already been filed in support of their respective case, if they so desire to file.

42) After completion of the pleadings, if considered necessary, the Court may also frame additional issues or/and recast the issues already framed and then decide both the cases by common judgment.

43) As mentioned above, the cases in question arise out of the Act and hence the factual and legal findings have to be rendered keeping in view the relevant provisions of the Act as interpreted by this Court in decided cases cited by the learned counsel in support of their contentions.

44) We, however, make it clear that we have not expressed any opinion on the merits of the case and nor recorded any finding on the merits of the controversy. The Special Court would, therefore, decide both the cases strictly in accordance with law on merits without making any reference to the order of the Special Court and High Court and uninfluenced by any observations made by this Court, High Court and Special Court, in any of their judgments.

.....J. [R.K. AGRAWAL]J. [ABHAY MANOHAR
SAPRE] New Delhi;

November 15, 2017