Supreme Court of India
State Of Andhra Pradesh vs Kalva Suryanarayana And Others on 5 February, 1992
Equivalent citations: AIR 1992 SC 797, JT 1992 (1) SC 499, 1992 (1) SCALE 291, (1992) 2 SCC 732, 1992 (1) UJ 431 SC
Author: R Sahai
Bench: M K I., R Sahai
ORDER R.M. Sahai, J.

1. The only question that arises for consideration in this appeal, directed against the judgment of Andhra Pradesh High Court is, if the High Court committed any error of law in affirming the judgment and decree passed by the Civil Judge decreeing the suit of the plaintiff/ respondents for declaration that they were owners of the land in dispute and permanent injunctions restraining the defendant/appellant and A.P. State Road Transport Corporation, respondent No. 12 from interfering in their possession.

2. The suit was founded on title derived through purchase from one K. Nagaiah who had himself purchased from K. Malliah. It was claimed that respondents and their predecessors in interest had been in possession of the land in dispute as owners since last over seventy years. They had been paying the land revenue and entering into transactions in respect of parts of the land from time to time. Suit was resisted apart from merits on limitation, non-joinder, deficient court fee, territorial jurisdiction, validity of notice etc. None of them found favour with trial court. In appeal the challenge appears to have been, confined, to merits only. Even in this Court no effort was made to assail the finding recorded on different issues except the one on title and ownership of the respondents.

3. Controversy centerd round plot Nos. 65 and 66. It has been found by the two courts that these two plots were owned by one K. Raja Mallaiah who had transferred them in favour of Kalbarla Nagaiah who in turn sold it to respondents' ancestOrs. Ownership of R. Rana Mallaiah was not disputed even in the written statement but according to appellant the land was acquired by the Nizam of Hyderabad under the Farman and in any case by Notification issued under Section 3 of the Hyderabad Land Acquisition Act analogous to Section 4 of the Land Acquisition Act, 1894, in respect of which compensation was paid and possession was obtained. The Civil Judge accepted plaintiff's case and found that since the appellants admitted that K. Nagaiah was the original pattedar of land in dispute which today were survey Nos. 65 and 66, it was for the appellant to establish that title of the respondent's predecessor was extinguished. The Civil Judge held that there was no Notification under Land Acquisition Act in respect of plot No. 65. And in respect of plot No. 66 the appellant based his claim on Farman issued by the Nizam of Hyderabad but no copy could be filed to show that the plot was acquired. And, as regards its acquisition all that could be established was issuance of notification under Section 3 of Hyderabad Land Acquisition Act. But there was neither evidence of payment of compensation nor taking of possession. This finding is based, apart from other evidence, on statement of the Revenue Assistant in the Collectorate office produced on behalf of the appellant. Consequently the Civil Judge held that the title of the previous owner even in respect of survey No. 66 was not extinguished. In appeal the High Court found that according to copy of the notification the land notified for acquisition included plot Nos. 43-40 and 49; according

to comparative table survey No. 65 corresponded to survey No. 39 but as it was not acquired the appellant could not claim that the right, title and interest of the owner in survey No. 65 was extinguished. As regards survey No. 66, the court found that even though notification was issued in respect of this plot but there was no evidence to show that compensation was paid to original owners nor there was any material to prove that the Government ever took possession. It was, therefore, held that due to failure of the Government in making of award and taking possession the title of the owner subsisted and appellant could not claim that the land became property of the Government.

4. During pendency of appeal in this Court an application was filed to accept additional evidence comprising of Farman of Nizam, revenue extracts and various letters to establish that old number of survey No. 65 was 39 which was acquired alongwith other land for industrial purposes. When the appeal came up for hearing the learned senior counsel, Shri. Madhav Reddy, expressed his confidence about existence of Govt. Gazette showing that the land was acquired. He was, at his request, granted an opportunity to produce such Gazette. In pursuance of this he filed number of documents. But he could not produced the Govt. Gazette, rather he produced copies of those very documents which had been filed in the court below. Therefore, we did not consider it necessary to allow the application for additional evidence. Even otherwise the learned Counsel failed to make out any case for acceptance of additional evidence.

5. Even though the question whether land in dispute was acquired or not is primarily question of fact and has been dealt with threadbare both by the High Court and the civil judge yet in view of impassioned appeal of Shri. Madhav Reddy, the learned Counsel for the appellant, that the valuable land situated in heart of town was being lost to Government due to mishandling of the case by officials in lower courts and considering the larger public interest, as the land in dispute had been allotted to Andhra Pradesh Road Transport Corporation we permitted him to take us through the evidence to demolish the findings recorded by the two courts below. Shri. Reddy submitted that in fact plot No. 34 mentioned in the notification issued was a mistake. According to him what was acquired was plot No. 39. He urged that even the sale deeds executed in favour of respondent did not mention any survey number. It described the land by referring to the boundaries. This, according to counsel, tallied with boundaries of plot No. 34. Therefore, the learned Counsel submitted that plot No. 34 in notification was an error as admittedly plot No. 65 is new number of 39. In our opinion, the argument does not merit any consideration. No such plea was raised either in the written statement or during arguments in courts below. Even otherwise in absence of any material to prove conclusively that what was acquired was plot No. 39 and not 34 such roving inquiry cannot be permitted. No record or notings at time of acquisition could be produced to show that the proceedings related to plot No. 39. It could not even be proved that there was no survey No. 34 and if there was then its equivalent was a different plot which still exists. Moreover before filing of suit the respondent got the sale deed rectified and the land was described by plot numbers as well. It was challenged as purposive before courts below. They went into detail and have found in favour of respondents for good reason. The submission therefore for plot No. 65 cannot be accepted.

6. As regards plot No. 66 the learned Counsel submitted that it being admitted to have been acquired the respondent had no title in it which they could transfer in favour of respondent. Similar argument was rejected by the courts below for failure to establish that compensation was paid and

possession was taken. Various documents were produced at time of hearing of appeal to establish that the follow up action as required under law was taken. Here again the appellant could not produce any material which could clinch the issue in their favour. It could not be established that the courts below misread any document or relied on any inadmissible evidence. Even the inference drawn that possession was not taken could not be established to be perverse. Therefore, we do not consider it necessary to mention or discuss the documents on which reliance was placed.

7. Since the appeal raises no question of law much less any substantial question of law and the findings on title of respondents have been recorded by the courts below after consideration of evidence on record which could not be shown to vitiate by any error of law the appeal fails and is dismissed with costs.