

Supreme Court of India

Govt. Of Tamil Nadu, Rep. By Chief ... vs R. Thamaraiselvan And Etc. on 4 May, 2023

Author: M.R. Shah

Bench: M.R. Shah, C.T. Ravikumar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.1580-1608 OF 2022

GOVERNMENT OF TAMIL NADU & OTHERS

...APPELLANTS

VERSUS

R. THAMARASELVAM ETC. ETC.

...RESPONDENTS

WITH

CRIMINAL APPEAL NO. 275 OF 2022

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 10.02.2015 passed by the High Court of Judicature at Madras in Writ Petition No. 18872/2011 and other allied writ petitions, by which the High Court has allowed the said writ petitions Signature Not Verified Digitally signed by R Natarajan and has quashed G.O. (Ms.) No. 423, Home (Police XI) Date: 2023.05.04 16:38:35 IST Reason:

Department dated 28.07.2011 (hereinafter referred to as 'G.O. No. 423 dated 28.07.2011') as well as G.O.(Ms.) No. 451, Home (Court III) Department dated 11.08.2011 (hereinafter referred to as 'G.O. No. 451 dated 11.08.2011'), the State of Tamil Nadu has preferred the present appeals.

1.1 Criminal Appeal No. 275/2022 has been preferred challenging the impugned order dated 04.11.2020 passed by the High Court of Judicature at Madras in Criminal O.P. No. 23641/2019, by which the High Court has directed to transfer the case being C.C. No. 2 of 2012 from the Court of Special Judicial Magistrate, Land Grabbing, Erode to the file of Judicial Magistrate-II, Erode.

2. Vide G.O. No. 423 dated 28.07.2011, the State of Tamil Nadu sanctioned formation of 36 Anti Land Grabbing Special Cells in Tamil Nadu with one cell each at the State Police Headquarters, 7 Commissionerates and 28 Districts to deal with the Land Grabbing Cases in the State. Consequent upon the said G.O., another G.O. bearing No. 451 dated 11.08.2011 came to be issued and the Land Grabbing Cases were ordered to be transferred to the Special Courts which were constituted exclusively to deal with the Land Grabbing Cases. The aforesaid G.Os were the subject matter of the writ petitions before the High Court.

2.1 By the impugned common judgment and order, the High Court has set aside G.O. No. 423 dated 28.07.2011 by holding that the same does not lay down any yardstick or guideline to pick and choose and select particular cases against particular persons said to have indulged in land grabbing and in the absence of definition of the word/phrase “Land Grabbing”, discretion is vested with the police personnel attached to the Anti-Land Grabbing Cell to pick and choose against whom they want to register FIR and proceed with the investigation and on account of the same, the possibility of abuse and misuse of power cannot be ruled out. While quashing and setting aside G.O. No. 423 dated 28.07.2011, the High Court has also observed that the State Government is at liberty to bring any appropriate legislation along the lines of the A.P. Land Grabbing (Prohibition) Act, 1982 or better legislations de hors the result of the writ petitions. Consequently, the High Court has also quashed and set aside G.O. No. 451 dated 11.08.2011. The impugned common judgment and order passed by the High Court is the subject matter of present Civil Appeals.

3. Shri R. Shunmugasundaram, learned Advocate General has appeared on behalf of the State of Tamil Nadu.

3.1 Learned Advocate General appearing for the State of Tamil Nadu has vehemently submitted that the High Court has erred in quashing the Government Orders by holding that in the absence of definition pertaining to offence of “Land Grabbing”, the Special Cells constituted for investigating the cases pertaining to land grabbing are not competent to investigate those kind of cases.

3.2 It is further submitted that the High Court has erred in quashing and setting aside G.O. No. 423 dated 28.07.2011 on the possibility of abuse and misuse of power by the police officers. That the possibility of abuse or misuse of a provision by the authority cannot be a ground for a legislation to be held to be arbitrary or violative of Article 14 of the Constitution of India.

3.3 It is next submitted that the High Court has failed to appreciate that the Special Cells were constituted to deal with the specific problem in the State of Tamil Nadu where large number of complaints are being filed alleging that goondas by using their muscle power have forcibly occupied lands.

3.4 It is contended that the High Court ought to have appreciated that the expression “Land Grabbing” does not need any specific definition as the said expression relates to Sections 447, 420 and 506 of the Indian Penal Code.

4. We have heard learned Advocate General on behalf of the State of Tamil Nadu at length. We have gone through the common impugned judgment and order passed by the High Court. We have also gone through G.O. No. 423 dated 28.07.2011, which reads as under:

“HOME (POL-XI) DEPARTMENT G.O.(Ms) No. 423 Dated: 28.07.2011 From the
Director General of Police, Chennai – 4, letter Re: No.:176388/RA I (2)/2011, dated :
13.07.2011 O R D E R:-

In the Press Release dated: 10.07.2011, the Hon'ble Chief Minister has made an announcement that Anti Land Grabbing Special Cells will be formed in Tamilnadu to deal with the Land grabbing cases in the State.

2. Based on the announcement made by Hon'ble Chief Minister, the Director General of Police has sent necessary proposals to the Government for the formation of 39 Anti Land Grabbing Special Cells with 410 Police personnel to deal with the land grabbing cases in the State with the financial commitment for Rs.27,71,11,658/-.

3. The Government after careful examination have decided to accept the proposal of the Director General of Police with certain modifications and accord administrative sanction for the formation of 36 Anti Land Grabbing Special Cells in Tamilnadu with one cell each at the State Police Headquarters, 7 Commissionerates and 28 Districts except Karuru, Tiruvannamalai and Nagappattinam Districts for a period of one year on temporary basis. In case of those three Districts, the District Crime Branch will handle the investigation of land grab complaints. The Staff pattern of 36 Anti Land Grabbing Special Cells in Tamilnadu is indicated in the Annexure-I of this order. The Government also accord financial sanction for a sum of Rs. 20,02,08,842/- (Rupees Twenty Crores, two lakhs, eight thousand, eight hundred and forty two only) for the formation of 36 Anti Land Grabbing Special Cells. The recurring and non- recurring expenditure are Rs. 12,51,01,380/- and Rs. 7,51,07,462/- respectively, as indicated in the Annexure-II to IV of this order.

4. The expenditure sanctioned in para 3 above shall be debited under the relevant following head of account:

“2055-00-Police – under respective sub-heads”

5. The expenditure is an item of “New Service”. The approval of the Legislature will be obtained in due course. Pending approval of the Legislature, the expenditure will be initially met by an advance from the contingency fund, orders regarding which will be issued by the Finance (BG.I) Department separately. The Director General of Police, Chennai is requested to apply for an advance for the required amount from the contingency fund in the current year to the Government in Finance (BG.I) Department in the prescribed proforma together with a copy of this order. He is also directed to send a draft explanatory note, indicating the total cost of the scheme, the cost that would be required for the implementation during the financial year etc. to Government Finance (BG-I) Department for inclusion of the expenditure in the supplementary estimates, for bringing it to the notice of the legislature in due course.

6. This order issues with the concurrence of the Finance Department vide its U.O. No. 39471/CMPC/2011-1, dated 28.07.2011 and Additional Sanction Ledger No: 337 (Three hundred and thirty seven).

(BY ORDER OF THE GOVERNOR) RAMESHRAM MISHRA PRINCIPAL SECRETARY TO GOVERNMENT”

5. By the aforesaid G.O., the Government of Tamil Nadu has constituted/formed 36 Anti Land Grabbing Special Cells to deal with the land grabbing cases. However, it is required to be noted that the type of cases can be said to be land grabbing cases has not been defined and/or mentioned in the said G.O. Therefore, it will be at the discretion of the concerned police officers to treat and/or consider any case relating to land as land grabbing case, which shall be investigated by the Anti-Land Grabbing Special Cell, rather than by the police officers under the Cr.P.C. It is required to be noted that as such there is no Anti-Land Grabbing Act in the State of Tamil Nadu like A.P. Land Grabbing (Prohibition) Act, 1982 or Karnataka Land Grabbing Prohibition Act, 2011 or similar Land Grabbing Prohibition Acts in other States. It is required to be noted that in the other Land Grabbing Prohibition Acts applicable in the States of Andhra Pradesh, Karnataka, Gujarat and Assam, "Land Grabbing" is specifically defined. Even the term "Land Grabber" is defined. For example, in Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, "Land Grabber" and "Land Grabbing" are defined as under:

"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. "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 licences 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; and the term "to grab and" shall be construed accordingly.

6. Insofar as the State of Tamil Nadu is concerned, it is an admitted position that there is no specific enactment and/or Act to deal with land grabbing cases, like Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 and the Anti-Land Grabbing Special Cells have been formed by G.O. No. 423 dated 28.07.2011 to exclusively deal with the land grabbing cases. In absence of any guidelines and/or definition as to which cases can be said to be land grabbing cases, it gives unfettered and unguided and arbitrary powers to the police to treat any land case as a land grabbing case which will be investigated by the Anti-

Land Grabbing Special Cell. Even a dispute between two private persons which may be under the Specific Relief Act and/or Transfer of Property Act may be considered as a land grabbing case like in Criminal Appeal No. 275/2022 in which a Civil Suit was pending for specific performance which was dismissed for non-prosecution and thereafter the defendant filed a complaint/FIR for the offences under the IPC. Therefore, as such, it is rightly held and observed by the High Court that in absence of any specific guideline and/or definition of "land grabbing cases," such powers can be abused or misused and such powers can be said to be exercised arbitrarily. Therefore, the High Court has rightly set aside G.O. No. 423 dated 28.07.2011 with liberty to the State Government to bring any

appropriate legislation on the lines of A.P. Land Grabbing (Prohibition) Act, 1982 or better legislations after defining and/or providing the guidelines as to which offences can be said to be “land grabbing cases”. Therefore, the impugned judgment(s) and order(s) passed by the High Court does/do not call for any interference by this Court.

7. Under the circumstances, Civil Appeals preferred by the State deserve to be dismissed and are accordingly dismissed. However, we reiterate that if the State Government is so conscious and/or interested in taking action against land grabbers, it will be open for the State Government to bring an appropriate legislation with the clear definition of “land grabber” and “land grabbing” or better legislations with a clear definition of “land grabbing”, “land grabber” and “land grabbing cases” and the present order shall not come in their way to enact such legislation and/or better legislations.

8. In view of the above, Criminal Appeal No. 275/2022 which was with respect to private persons by which the Criminal case between the parties is ordered to be transferred to the regular Court from the Special Court (Land Grabbing) deserves to be dismissed and is accordingly dismissed.

.....J.

[M.R. SHAH]

NEW DELHI;
MAY 04, 2023.

.....J.
[B.V. NAGARATHNA]