

10. In a recent Full Bench judgment of our High Court reported in 1998 (3) ALT 96, the High Court observed that a decision given contrary to or in ignorance of the terms of a statute or of a rule having the force of a Statute is also treated as given “*per incurium*”. The Full Bench of our High Court relied upon three decisions of the Supreme Court referred to in that decision in paras 16 to 18 of the judgment.

11. In view of the legal position I am of the view that the observations of Hon’ble Ms. Maruti, J., about the Limitation aspect are not at all correct and that they are

only the result of incorrect and incomplete contentions, and that these observations require immediate reconsideration. As the said observations of the Hon’ble Judge are causing loss. I request the High Court and the Honourable Judge to review the matter so that further loss is not resulted to litigant public.

12. Before concluding I also state that 1-11-1971 might have been a holiday for the Courts on account of the Andhra Pradesh Formation Day, in which case the suit filed on 2-11-1971 will be in time. This factual aspect should have been checked up by the plaintiff’s Counsel.

CONSTITUTION AND FUNCTIONING OF SPECIAL COURTS AND TRIBUNALS UNDER THE A.P. LAND GRABBING (PROHIBITION) ACT, 1982

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The Land Grabbing (Prohibition) Act, 1982 is a special enactment applicable in the State of Andhra Pradesh and was brought into the statute book to meet the peculiar situation created by certain groups of people known as Mafia or land grabbers.

There are two types of Courts established under the Act. One is the Special Court, which was formed in the year 1982 and the other is the Special Tribunal. The Special Court consists of a Working/Retired Judge of the High Court with two benches in this Court. One consisting of the Chairman (Working/Retired High Court Judge), a Judicial and a Revenue member. The other bench consists of a Judicial and a Revenue member. The Special Tribunal consists of the District Judge/Chief Judge, as the case may be in Mofussil or city area.

The Act was mainly passed for the purpose of arresting the land grabbing activities of the

Mafia, which had increased to an alarming proportion.

The two important aspects of the entire Act is the Constitution of the Special Court and its functioning. The constitution and functioning of any Court, must be such as to create confidence in the mind of the public about its integrity and effectiveness. The Special Court, however comprises of retired people accountable to none but themselves. The control which the Chairman is supposed to exercise is illusory. It has become a haven and a rehabilitation centre for those retired officials, who some how catch the eye of the authorities. The term of the members of the Special Court is limited to 2 years and the Government has the right to abolish the Court at its pleasure. Thus, the members of the Special Court are persons who hold office at the pleasure of the Government or for a period of 2 years with expected renewal/renewals of their term of office.

It would be not unreasonable to expect that these persons might subconsciously feel obliged to the Government or Government authorities for their position and continuance. Besides, a damocles sword of sudden abolition of the Court hangs over their heads, making them wary of incurring the displeasure of the Executive authorities. This situation assumes great importance, since the decisions of this Court are final and there is no appeal over them. The only remedy available is by way of writ or writ appeal to the High Court and the scope of writ jurisdiction being limited, errors of facts and law contained in the judgment cannot be set right by the High Court. Thus, the judgments of the Special Court, whether they are justifiable or not is final and binding on all parties involved. These circumstances do not make, independence of the Court taken for granted as the members are appointed by the Executive authorities and hence a legitimate suspicion would arise in the minds of the public about the ethos and ambience in which the Court works. The only check that can be exercised over these members is by the Chairman, who is appointed in consultation with the Chief Justice of the High Court. It is humanly impossible for the Chairman to monitor each and every case. The consequences of this will be that the decisions of the Court may not always be in accordance with law or based on equity, justice and good conscience. It is submitted that the constitution of any Court must not only be beyond criticism but must also appear to be so, because justice is rooted in confidence and the Courts must be formed and function to ensure confidence in the public. To allay these fears and suspicions that may arise in the public mind, provisions also should be made for correcting the errors by way of appeals or otherwise.

Another important aspect of the matter is that even though the Act was mainly passed for the urgent purpose of arresting land grabbing activities, it must be examined how far the purpose for which

it has been established is achieved. An examination of the cases, decided by the Court indicates that the Government, which is the major litigant, file cases mostly against persons, who have purchased the land, constructed houses thereon and have been staying in them for a number of years. Such persons are suddenly confronted with an allegation that they are occupying the Government land and that they should be treated as land grabbers, thereby making them liable both civilly and criminally as the Act provides both for eviction and punishment. This situation is intolerable in a democracy, where an innocent citizen is suddenly turned into a criminal. This smacks of Spanish Inquisition. It is also provided that the Court may take *suo moto* action, about the land grabbing, which is indeed a harsh provision. People who have no idea that they are wrongdoers, are brought before the Court to be dealt with under the provisions of the Act. The Mafia, whose activities the Act intends to curb, are seldom before the Court. The Revenue, Survey and other departments files suits mainly against the *bona fide* purchasers to boost their statistics. It is a moot question as to what extent the provisions of the Act have met the requirements of preventing land grabbing operations. When we look into the cases it is also found that the land grabbing is more artificial than real as the land holders, who have come into possession of the land as *bona fide* purchasers are classified as land grabbers. This gives an opportunity for the Revenue, Survey and other departments to play infinite mischief.

To remedy these deficiencies, that have come to light during the working of the Special Court, the following points may be considered for effective correction of the deficiencies :

- a. There is no point in not having appeal against the judgments of the Special Court, which comprises of one bench consisting of Retired

District Judge a Revenue Member and a Chairman, the other a District Judge and a Revenue Member. Having regard to the fact that the properties involved are very valuable running into lakhs and crores of rupees, it cannot always be trusted to the infallibility of the judgment of the Special Court, particularly when appeals are provided for against the judgments of the single Bench or Division Bench of the High Court or the Supreme Court. No such provision is made in the case of the Bench of the Special Court and it is not as if members of the Special Court are persons of wider judicial experience than that of a Division Bench of a High Court.

- b. The jurisdiction of the Special Court should be limited to actual land grabbing and not for preventive actions, like permanent injunctions or declaration *etc.*, which are within the jurisdiction of the Civil Courts by all accepted norms.
- c. The Government being the appointing authority of the members of the Special Court, the appointments must be made invariably by the

High Court or by the Government from persons, who are not retired, but who are accountable to the High Court or to the Government ultimately as the case may be. The Government being party in a majority of the cases it would be desirable that the Government should have the right in appointment of the members of the Court.

- d. When Special Tribunals are there to go into the questions in various Districts to determine the facts of the land grabbing, if any, there is no need for any Special Court once again to exercise the same jurisdiction that too by a retired/working District Judge. As against the judgment of the Special Tribunal, it would be desirable to have one Judge alone and other retired or working Judges to sit as appellate Court to take up matters decided by the Special Tribunal.
 - f. It may be mentioned incidentally that the filing of land grabbing cases has created a field day for the Revenue and Survey and other Departments, to indulge in their wonted activities in these cases.
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