

# A CRITICAL STUDY ON LAND GRABBING PROHIBITION ACT, 2011 IN KARNATAKA

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## Abstract

*Land grabbing is a challenging factor, which states facing in India. Land grabbing refers to the process where individuals of the State acquires or encroaches public lands unlawfully. Generally, the purpose is to gain more property, mining of Gomal lands, acquiring lakes and other water resource to gain capital from the lands by leasing and selling etc. Prior to passage of encroachments on government lands in Karnataka, state government enacted Karnataka Land Grabbing Prohibition Act, 2011 in Karnataka to prohibit and prevent land grabbing in Karnataka. Under this Act, the government could retain government lands and punishes land grabbers or the person who are in unlawful possession. Land grabbing done by individuals, companies and real estate agents. It says the welfare state the individuals can't encroach the government land. This paper makes analysis of Karnataka Land grabbing prohibition Act, 2011 in Karnataka and observed well structured framework of Sections, principles, processes with case studies and punishments. This can be accomplished by speedy trial of cases in the Special Courts.*

**Keywords:** Land grabbing, Land grabber, Gomal lands, Special Courts, Adverse Possession, Punishment

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## Introduction

Land is a finite resource with certain special qualities and characteristics. It is treated as one of the most important resources and the ultimate ownership of the land lies with state in every society. Moreover, land signifies the economic power of state. **'Land grab'** as it is the recent cross border rush to government lands. Over the past several years, there has been unprecedented grabbing of large tracts of government lands by Individuals of the State<sup>1</sup>. The land is essential for the development of state and it is an ample source of creation, sustenance and destruction for living and non living things. There cannot be any land without an owner it is an accepted fact that the sovereign authority or State is the real owner of all the lands existing under its regime.

Land grabbing prohibition Act in Karnataka refers to the process of unlawful government land grabbing in state. Land Grabbing Act provide for measures to curb organized attempts to grab lands belonging to the Government, Wakf or Hindu Religion Institution and Charitable Endowments, local authorities or other statutory or non-statutory bodies owned or controlled or managed by the Government. Land grabbing

prohibition Act is a state legislation currently governed by Karnataka Land Grabbing (Prohibition) Act, 2011.<sup>2</sup> Which is pari material with Andhra Pradesh Land Grabbing Prohibition Act, 1982.

Land grabbing is where, unlawful enters or occupies on any Government land with the intention of holding that Government land and creating a forged documents regarding Government lands with an intention to grab such lands also amounts to land grabbing. In Karnataka 40,000 hectors has been grabbed and 6000 cases are registered in Special Courts.

**'Land grabber'** is a person or group of persons or a society, who commits or has committed land grabbing and including any person who gives financial aid to any person for taking illegal possession of lands.

In the case of *Mandal revenue Officer v. Goundla Venkaiah & Anr, 2010*<sup>3</sup> in this case the Hon'ble Sri Y.V. Chandrachud, Chief Justice, Supreme Court of India, explained land grabbing is unscrupulous and resourceful persons backed by wealth and occupied without any semblance of right, vast extents of land belonging to the Government, Local authorities, Wakfs and

<sup>1</sup> V.G. ramachandra's, *The law of Land*, (Justice G.C. Mathur rev'd Eastern Book Company, Lucknow, 8<sup>th</sup> ed., 1995), P 1.

<sup>2</sup> V. Thyagaraj, *The Land Grabbing Prohibition Act, 2011*, p 2 & 5.

<sup>3</sup> *Mandal Revenue Officer Vs Goundla Venkaiah & Anr*, 2010 – indiankanoon.org.

Charitable and Religious Endowments and evacuees and private persons amounts to land grabbing. It also says the land grabbers will be punishable if they commits any land grabbing.

### **Reasons**

Encroachment of Government and public lands belonging to statutory and local bodies in Karnataka. Especially in Bangalore Urban and Bangalore Rural Districts, due to the high value of lands, large areas of government land like gomal, gunduthope, tank-beds, parks and civic amenities sites have been extensively encroached upon and converted into buildings sites and buildings have come up illegally. Hence, the State Government of Karnataka with a view to prohibit the activities of land grabbing and to provide for matters connected therewith has proposed to bring the Karnataka Land Grabbing Prohibition Act into force.

### **Some Provisions Relating to Land Grabbing In Karnataka**

There are many legal provisions in various enactments for the prosecution of public land encroachments such as

- Karnataka Land Revenue Act, 1964
- Karnataka Land Reforms Act, 1961
- Karnataka Forest Act, 1963
- Karnataka Conservation Act, 1980
- Karnataka Public Premises (Eviction of Unauthorized Occupants) Act, 1974

These are all the other laws, which enacted to protect public lands.

### **Legislation Intention**

Land Grabbing Prohibition Act, are meant to arrest and curb illegal activity of land grabbing by unscrupulous elements. It is protective legislation for land owners but not otherwise. It is intention to obviate the difficulties and hardship faced by the government land and public properties. To protect the lands and properties the special courts are established to deal with land grabbing cases.

### **Salient features of Karnataka Land Grabbing Prohibition Act**

1. It applicable to all lands belonging to government, local authority, a statutory or non-statutory body and includes Trust, Society.
2. Land-grabber includes who unlawfully takes possession of government lands and properties.
3. Land-grabbing is punishable by the Special court with a minimum of 1 year's imprisonment and a maximum three years with fine up to Rs.25,000.
4. All land grabbing cases in the State will be tried only by the Special Court and the decision of the Special Court will be final.
5. The Special Court will have powers of the Civil Court and the Court of Session.

6. Where it is proved that the land is owned by the Government, the burden of proof that the land is not grabbed lies with accused.
7. In areas where Special Court is not constituted, a Magistrate of the First Class can be empowered by the Government to try offences under this Act.
8. This Land grabbing prohibition Act overrides all other laws. All cases of land-grabbing nature before any other Court or Authority transferred to the Special Court under this Act.

### **Current legislative framework for Protection of Government Lands**

Land grabbing in Karnataka is currently governed by the Karnataka Land Grabbing Prohibition Act, 2011 which is in *pari materia* with Andhra Pradesh Land Grabbing Prohibition Act, 1982. The Act, 2011 brought several changes to the protection of government lands or properties in the state. The Land Grabbing Act deals with various facets of land grabbing and provide for a comprehensive machinery for determination of various issued relating to government lands.

- Section 3 declares land grabbing in any forms as unlawful and makes any activity connected with or arising out of land grabbing an offence punishable under the Act.

- Section 4(1) 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, any government lands by private person, shall be guilty of an offence under the Act.
- Section 7(1) the state government is empower to constitute Special Courts for speedy and enquiry into any alleged act of land grabbing and trial of cases in respect of ownership. Section 7-A(1) lays down Special Tribunal to hold the cases which are not filed in Special courts.
- Section 8(1), the Special Court is empowered to either suo moto, or any application filed by any officer or authority regarding alleged land grabbing.
- Section 8(2) contains and gives finality to the decision of the Special Court and its provisions.
- Section 10 contains special rule of Burden of Proof. Under this the accused has to prove the land owner as him.

Government, may, by notification, authorize an officer of the Government, not below the rank of Tahsildar, to be officer responsible

for administration and effecting implementation of the provisions of this Act, initiate legal action against the persons contravening the provisions of this Act.

**Special Courts: Article 323-B** of the constitution provided the legislature may by law, provide for adjudication or trial by tribunal of any dispute or offences.

- The Karnataka Land Grabbing Prohibition Special Courts are established on 10.08.2015 as per Government Order No. LAW 162 LCE 2014 under the Karnataka Land Grabbing Act 2011 section 7.
- The Special Court is a high-powered body “presided over by a serving or retired High Court Judge and other members being two retired or serving District Judge and two persons who hold or have held a post not below the rank of a Deputy Commissioner.
- The Special Court is invested with both civil and criminal powers, it shall determine the order in which they shall be taken up and within its discretion to decide the judgment should not be delivered until both the civil and criminal proceedings completed. It also explains the evidence admitted during criminal proceedings may be use while trying civil liability, but in criminal

proceedings the evidences of civil proceedings are not liable. ***State Delhi Administration vs. V.C. Shukla***<sup>4</sup>, in this case the Tribunal or Special court are required to follow the provisions of the Code of Civil Procedure and Code of Criminal Procedure. Being a ‘Court’ the provisions of the Indian Evidence Act would also be applicable. But, the Special Court shall determine the order in which the civil and criminal liability against a land grabber initiated.

- The establishment of Special Courts was in order to try to decide classes of offences and cases, as the government by general or special order direct. ***Kanthal Raning Vs State of Sourasthra***,<sup>5</sup> declares that parliament was fully competent to pass special court bill and classification made has responsible with the object sought to be achieved for quick disposal and for speedy trial.
- The judgments passed in Special Court can be reviewed by High Court of the state.
- Special Court to Have powers of the Civil Court and the Court of Session under Section – it has all the powers

<sup>4</sup> ‘*State Delhi Administration vs. V.C. Shukla*’, AIR 1980 SC 1382.

<sup>5</sup> ‘*Kanthal Raning v. State of Sourasthra*’, AIR 1952 SC 123 : 1952 SCJ 16

related to civil court and Court of Session if it prescribed in the cases.

### Procedure of Special Courts

1. Registration of the case in Special Court through task force or officer
2. Summons to Respondents with related documents
3. Proceedings before the Court
4. Inspection of Documents submitted by Respondent
5. Inspection of Record
6. Production of Record in the custody of a Court
7. Return of Documents
8. Adoption of forms of CPC
9. Procedure of Suo Motu Action
10. Judgement

The power of the special courts to try the land grabbing cases is in term of Section 3(4)(a) of Cr.PC. **Criminal Proceedings:** under section 456(1) Criminal Proceedings have been issued against the petitioner and others who are involved in the forced possession and transaction which was alleged as a fraudulent one. *P.M. Elavarasan vs. Inspector General of Registration*<sup>6</sup>, it is a clear case of land grabbing attempted by the petitioner by presenting forged documents.

**IPC Provisions relating to land grabbing:** offences registered by the Land Grabbing

Cells mainly pertain to Sections 447(Criminal Trespass), 420(cheating) and 506(criminal intimidation) and other offences, if the allegations in the complaint make out a case under relevant provisions.

### Case Study

- State of Karnataka v. B. Krishna Reddy

The Karnataka Land Grabbing Prohibition Special Court Has sentenced a resident of Yarandhalli in Jigani hobli of Anekal Taluk to one-year jail for encroaching government land. B. Krishna Reddy, who was a resident of Anekal Taluk encroached 1 acre of government land and he found guilty under Section 192(A) of Karnataka Revenue Act, 1964 and with fine of Rs 5.000. The Special Court has also directed the Anekal tahsildar to evict Reddy from the land.<sup>7</sup> The Special Court also directed tahsildar to maintain records of government lands and to file a case in registrar if he found any alleged land grabbing.

- The State of Karnataka v. Holeyappa S/o Benavappa And Ors

The appellants in W.A. No. 3813/2005 and Petitioner in W.P. No. 221221/2005 claim that they are

<sup>6</sup> 'P.M. Elavarasan v. Inspector General of Registration', 2014, 3 LW 650: Writ Petition No.

27012 of 2013 and M.P. No. 1 of 2013; Decided on: 01-01-2014 (Madras High Court).

<sup>7</sup> 'State of Karnataka v. B. krishna Reddy' 2019.

unauthorisedly cultivating land in Chikkashakuna Village, Somba Taluk in shimoga District but the tahsildar of district restricted them to not cultivate in unauthorized gomal lands which are government lands allotted for village development. The learned judge in his report says the provisions of Section 71 of Land revenue Act and Rule 97(4) that explains 'no person can claim a right for regularization of authorized or unauthorized gomal lands and therefore, The writ petition of Appellants was dismissed by the judge and directed that holeyappa was cultivating in Gomal lands which were government lands and the authorities were directed to retain the gomal land<sup>8</sup>.

- Indo American Hybrid Seeds... v. The Tahsildar  
The petitioners, who are the authorized signatories and Directors of the first petitioner Company, have sought for quashing of the entire proceedings in Land Grabbing No.24/2017 on the file of the Special Court constituted under the Karnataka Land Grabbing Prohibition Act, 2011. The Special Court has taken Cognizance of the said Act and issued process against

the petitioner.<sup>9</sup> The order passed by the court mention that the company has been using some portion of Government lands 1 acre for their purposes, without there being any grant license or lease by the Government. This has examined by the Special Court, whether the same amounts to grabbing of the land or not during the trial. Hence, the petition is partly allowed. Taking of cognizance against petitioner by the Special Court is hereby quashed and proceed in accordance with law against petitioner who is represented by its authorized signatory.

#### **Pros and Cons of the Act with reference to recent case laws**

##### **Pros:**

1. The existing Act includes and follows 5 frequent land laws for the protection of government lands and lakes. Present amendment bring for the protection of lands and punishment, fine for the alleged land grabbers of government lands.
2. The Special Courts in the land grabbing Act allows a speedy trial of cases.
3. As for the Act enacted the encroached and unlawful occupied

<sup>8</sup> *The State of Karnataka by Its Tahsildar v. Holeyappa and Ors*' 2006 KAR 259.

<sup>9</sup> *Indo American Hybrid Seeds v. The Tahsildar*' 2018.

lands by private persons should be return back to the government. The officials also punished if they found in unlawful encroachments and acquisition.

**Cons:**

1. Individuals and government officials will be punished if they found guilty of violating any law of existing in land grabbing Act.
2. The new law controls unlawful constructions, quarrying in gomal lands and kharab lands, forest encroachments and protect lakes, and water resources.
3. Prevent the person who gaining wrongful possession of the land.

**Major Drawbacks of the Land Grabbing prohibition Act**

- The Land Grabbing Act, though it provided government to retain government lands, but the people who are living at that land for years, it becomes difficult for them to find other places.
- By Adverse possession, the land grabber can claim the ownership title-

the accused presented any documents proving he is living at that particular property for 30 years then he can claim the title of ownership with the help of Adverse possession.

**Conclusion**

After the study of this Act, it can be said the Land Grabbing Prohibition Act creates social awareness to the individuals of the state. Due to continuous unlawful possession and decreased number in government properties in state and to overcome the arising problems in the state regarding illegal construction and encroachments of lands, state enacted Karnataka Land Grabbing Prohibition Act to control unlawful occupations, encroachments of lands, unlawful tenancies of government properties and to control land grabbers from grabbing of government lands and water resources. The Land Grabbing Prohibition Act, 2011 is clearly a long-delayed attempt to address the violation of government lands and grabbing of water resources in Karnataka. Through following provisions of the Act and speedy trial by court, state can prohibit land grabbing in Karnataka.