

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.3022 OF 2003

DATED : 11.12.2017

Between :

State of Andhra Pradesh,
Rep., by the Authorised Officer,
Land Reforms, Bandar, Krishna District.

..

Petitioner

And

Chilakapati Venkata Ranga Rao (died)
Per L.Rs., Respondents 8 and 9 & others.

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Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER :

The respondents herein filed declaration under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Act, 1973'). They have disclosed only small extent of lands as in excess of the standard holding they are entitled to. Accepting the said declaration, orders were passed by the Land Reforms Tribunal (for short 'the Tribunal'). After the orders are passed by the Tribunal, the villagers of Indupalli filed Mahajar petition before the erstwhile District Land Reforms Officer, Krishna, Machilipatnam in November, 1987, alleging that the declarants have set up bogus agreement of sales besides they kept some lands in the name of Binami holders and prayed to enquire into the matter afresh. It appears one Koganti Venkateswara Rao, and others have also filed a petition before the Lokayuktha alleging that false declaration was made by the declarants. On receiving of the said petition from Lokayuktha, the District Collector, enquired into the allegations through the Mandal Revenue Officer, Ungutur and based on the said enquiry reports, the District Collector filed petition in the Land Reforms Tribunal for reopening of the case. The case was accordingly reopened and fresh enquiry was conducted. It appears, in the fresh enquiry, two aspects were contended. The first aspect relates to non-disclosure of properties claimed to have been made by unregistered agreement of sales prior to coming into force of the A.P.Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and secondly with reference to properties which are alleged to have been wrongly shown as

bequeathed by way of Will deed executed. The Tribunal though found that there were certain sale transactions made by way of unregistered sale agreements prior to 24.01.1971, having regard to the contentions urged on behalf of owners of the properties that sales were made prior to 1971 and possession was also vested in the purchasers much prior to 1971 and the purchasers were paying the land revenue, held that the sale transactions are not excluded from the application of provisions of the Act, 1973 and therefore, said extents of lands cannot be included in the holdings of the declarants. Though the decision of the Hon'ble Supreme Court in the "**State of Andhra Pradesh Vs Mohd. Ashrafuddin¹**", was relied upon, the Tribunal by referring to the decision of the Hon'ble Supreme Court in "**Meria Venkata Rao Vs State of Andhra Pradesh & Others²**", rejected the said contention and held that the extent of lands covered by the agreement of sales made prior to 24.01.1971 have to be excluded from the land holdings of the declarants.

2. On appeal preferred by the State, the Land Reforms Appellate Tribunal (for brevity 'the Appellate Tribunal') upheld the said decision following the very same judgment. On the allegation of wrong reliance of alleged Will deed executed, the Tribunal rejected the contention and upheld passing of title with reference to property covered by the Will deed. Hence, this revision is preferred by the State challenging the decision of the Tribunal which is affirmed by the Appellate Tribunal.

¹ AIR 1982 SC 913

² 1995 Suppl (1) SCC 245

3. However, in this Revision, the State has confined the grounds of challenge only on the declaration given by the Tribunal and the Appellate Tribunal to the extent of excluding the properties covered by agreement of sales made prior to 24.01.1971. Thus, this Court is now considering the issue only to that extent.

4. Heard learned Assistant Government Pleader and Sri S.V.S.Chowdary, learned counsel for respondents 10 to 12.

5. Learned Assistant Government Pleader submits that the Tribunal as well as the Appellate Tribunal grossly erred in relying on the decision of **Meria Venkata Rao's** case and not accepting the principle of law laid down in **Mohd. Ashrafuddin's** case. As analysed by the Hon'ble Supreme Court in **Mohd. Ashrafuddin's** case, the land which is covered by unregistered agreements of sale, even if coupled with delivery of possession prior to 24.01.1971 are also to be included into the land holding of the declarants, as title did not pass on to the agreement holders, until and unless formal sale deed is executed. Admittedly no sale was made prior to 24.01.1971. The Hon'ble Supreme Court in **Mohd. Ashrafuddin's** case has highlighted the scope of various provisions of the Act, 1973 and held that the land covered by the agreement of sale coupled with possession have to be computed towards the holdings of original declarant as well as the persons in possession as a consequence to agreement of sale.

6. According to learned Assistant Government Pleader, the said principle of law in **Meria Venkata Rao**, was made in the peculiar facts of that case and has no application to this case.

7. Learned counsel for the respondents submits that the agreement of sales though unregistered was made prior to 24.01.1971, whereas the provisions of the Act, 1973 have come into force only from 24.01.1971 and therefore, it is not governed by the provisions of the Act, 1973.

8. Learned counsel further submits that the Act, 1973 specifically states that the transactions made between 24.01.1971 and 02.05.1972 alone have to be tested with reference to the interest to dispose of the property. Whereas the sales made earlier cannot be disturbed. He further submits that pursuant to the sale made by the declarants, possession was also handed over to them and they have been paying land revenue and possession is established. Therefore, the principle laid down by the Hon'ble Supreme Court in **Meria Venkata Rao**, applies to the facts of this case. Hence, the Tribunal and Appellate Tribunal were right in following the said decision and do not call for interference by this Court.

9. In view of the rival submissions, now the only issue for consideration is whether the lands covered by sale transaction stated to have been made prior to 24.01.1971, to be excluded from computation of land holding by the declarants ?

10. This issue is no more *res integra*. The issue was first considered by the Hon'ble Supreme Court in **Mohd. Ashrafuddin'**.

10.1 The Supreme Court held as under :

“The word 'held' is not defined in the Act. We have, therefore, to go by the dictionary meaning of the term. According to Oxford Dictionary 'held' means : to possess; to be the owner or holder or tenant of ; keep possession of;

occupy. Thus, 'held' connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term 'held' only in the sense of possession. For example, if a land is held by an owner and also by a tenant or by a person in possession pursuant to a contract for sale, the holding will be taken to be the holding of all such persons. It obviously means that an owner who is not in actual possession will also be taken to be a holder of the land. If there was any doubt in this behalf, the same has been dispelled by the explanation attached to the definition of the term 'holding'. The explanation clearly contemplates that the same land can be the holding of two different persons holding the land in two different capacities. The respondent in view of the definition certainly is holding as an owner, although he is not in possession.

It is by now well settled that a person in possession pursuant to a contract for sale does not get title to the land unless there is a valid document of title in his favour. In the instant case it has already been pointed out that the transferee came into possession in pursuance of an agreement for sale but no valid deed of title was executed in his favour. Therefore, the ownership remained with the respondent-transferor. But even in the absence of a valid deed of title the possession pursuant to an agreement of transfer cannot be said to be illegal and the transferee is entitled to remain in possession. If perchance he is dispossessed by the transferor, he can recover possession. The transferor cannot file any suit for getting back possession but all the same he will continue to be the owner of the land agreed to be transferred. The respondent, in our considered opinion, satisfies the conditions contemplated by the definition of the term 'holding' and the land transferred by him under a defective title deed will form part of his holding. The High Court, therefore, erred in holding that the land in possession of the transferee cannot be taken to be a part of the holding of the transferor-respondent.

11. In “**Begula Bapi Raju Vs State of Andhra Pradesh**”³, the petitioners therein, sought for reconsideration of the principle laid down in **Mohd.Ashrafuddin’s** case and contended that the sale made prior to 24.01.1971, even by way of agreement of sale are

³ (1984) 1 SCC 66

excluded from application of the Act, 1973 and cannot be computed towards the holdings of original owner. On thorough analysis of the relevant provisions, the Hon'ble Supreme Court concurred with the view taken in the earlier decision and held that the Supreme Court was not persuaded to accept the contention of the petitioners for re-consideration of the said view.

12. This issue was again agitated before the Hon'ble Supreme Court in "**Yedida Chakradhara Rao Vs State of Andhra Pradesh⁴**". The matters were placed before the Constitution Bench for consideration on various issues arising out of the Act, 1973.

12.1 Briefly noted, the question involved in that case was whether the land which has been agreed to be sold by the owner under an agreement of sale and possession of which was delivered in part performance of the agreement for sale, but pursuant to which no conveyance was executed till the relevant date, could be included both in the holding of the owner/vendor as well as the purchaser or whether it was liable to be included only in the holding of purchaser for the purposes of the Act, 1973.

12.2. Several cases were considered by the Supreme Court. In some of the cases there was part sale consideration and in some other cases there was full sale consideration paid. It was urged that the earlier decision of the Hon'ble Supreme Court in **Mohd. Ashrafuddin** and **Begula Bapi Raju's** case requires re-consideration.

12.3. The Hon'ble Supreme Court refused to re-consider the issue and held as under :

⁴ (1990) 2 SCC 523

“The explanation in plain language states that the same land can be held by one person in one capacity and by another person in a different capacity and provide that such land shall be included in the holdings of both such persons. The Explanation thus clearly contemplates that the same land can be held as contemplated under sub-section (i) by one person as the owner and by another person as his lessee or as a person to whom the owner has delivered possession of the land in part performance of an agreement to sell. On a plain reading of the language used in the Explanation, we find it that it is not possible to accept the submission that only where the land is in possession of a person can that land be regarded as held by him.

The correctness of this decision has been upheld by this Court in Begulla Bapi Raju Vs State of Andhra Pradesh. In that case one of the contentions urged on behalf of the petitioners was that land transferred by the petitioners under various transfer deeds to the outsiders and who came in possession also could not be included in the holding of the petitioners. This argument was negated by a bench comprising three learned Judges of this Court, which followed the decision of this Court in Mohd. Ashrafuddin case, and did not accept the plea that the decision in that case required reconsideration.

The question raised for our determination in this appeal is directly covered against the appellant by the decisions of this Court in two cases just referred to by us. In these circumstances, even assuming that there is another equally plausible view regarding the construction and the legal effect of Section 3 (i) of the said Act read with Explanation, that would not necessarily justify our reconsidering the question which has already been decided by this Court, although the decision was rendered by a bench comprising only three learned Judges of this Court. In our opinion, unless we find that the decisions in the aforesaid cases are erroneous, it would not be proper on our part to reconsider the same. Apart from this, as we have pointed out earlier, in our view, considering the clear language of Section 3 (i) of the said Act read with Explanation to that section, the view taken in Mohd. Ashrafuddin case is, with respect, the correct view, and we are inclined to take same view on the construction and legal effect of that provision.”

13. In **Meria Venkat Rao's** case, as can be seen from the facts of the case noted in Para No.1, there were two alienations. First alienation was on 24.06.1952 that is long before the ceiling on agricultural land was under contemplation and the other transaction pertains to the period between 24.01.1971 and 02.05.1972. The Tribunal excluded the transaction of the year 1952 from the holding of the appellant for determination of the ceiling area. The High Court affirmed the said decision.

13.1 In the context of the facts as noted in Para No.1 of the judgment, the Hon'ble Supreme Court observed as under :

"As far as the period prior to 24.01.1971 is concerned, there was no bar under any ceiling law on transfers or alienations and those have been left untouched by the said Act as well as by the Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act, 1972. The latter Act prohibited alienations or transfers by persons holding land in excess of the specified limits set out in Section 4 of that Act after the commencement of the Act which came into effect on 02.05.1972. In regard to alienations prior to 24.01.1971, therefore, the burden of proof remained as under the general law and was nowhere affected by the provisions of either the said Act or the Act of 1972 dealing with prohibition of alienations."

13.2. As can be seen from the judgment, the decisions of the Hon'ble Supreme Court referred to above, particularly the Constitution Bench judgment were not placed before the Hon'ble Supreme court. Furthermore, the Hon'ble Supreme Court noted that as the sale transaction took place in the year 1952 i.e., much prior to even contemplation of Land Ceiling Act and ceiling measures. The said principle has no bearing on the issue involved. Moreover, the principle laid down by the Constitution Bench is binding on this Court.

14. Having regard to the principle laid down by the Hon'ble Supreme Court, in **Mohd. Ashrafuddin's** case, as affirmed by the Constitution Bench, the land covered by an unregistered agreement of sale made prior to 24.01.1971, even if followed by possession and enjoyment of property by the purchaser, cannot be excluded from the holding of declarant/original owner of land and therefore, his standard holding is required to be determined by computing the entire extent of land including the land covered by unregistered agreements of sale though made prior to 24.01.1971.

15. Having regard to this settled principle of law, the decision of the lower Tribunal as affirmed by the Appellate Tribunal is liable to be set aside and is accordingly set aside.

16. The matter is remitted to the Tribunal for the limited purpose of consideration of total extent of holding by computing the land covered by the agreements of sale alleged to have been made prior to 24.01.1971 and determine the standard holding of the declarants/respondents, covered by C.C.Nos.1146/1374, 1376, 1383/GNV/75 on the file of Land Reforms Tribunal, Bandar, by putting on notice the purchasers who were in possession of the subject land.

17. With the above observations, the Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

P.NAVEEN RAO,J

11th December, 2017
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