

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.2401 OF 2005

DATED : 21.12.2017

Between :

Kodali Venkata Krishna Rao, (died per L.Rs, 2 to 4)
S/o.Umamaheswara Rao, Aged about 35 yrs,
Occu : Cultivation, R/o.North Valluru,
Thotlavalluru Mandal,
Krishna District & others.

.. Petitioners

And

The Authorised Officer,
Land Reforms, Collector's Office,
Krishna, Machilipatnam & others.

... Respondents



This court made the following :

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ORDER :

This Revision is preferred challenging the decision of Land Reforms Appellate Tribunal, West Godavari District, Eluru in L.R.A.No.11 of 2001 dated 03.01.2005. By this decision, the appellate Tribunal affirmed the decision of primary Tribunal dated 30.04.2001.

2. The case of the petitioners is, land to an extent of Ac.2.00 in Sy.No.345/2 of North Valluru village was purchased by the father of Late Kodali Venkata Krishna Rao, in 1963 and he was put in possession and has been in possession and enjoyment of the said property. He was also paying the land revenue. That being so, without putting him on notice, the said land was included in computation of the total extent of land held by the original owner Kodali Kotaiah and this piece of land was found to be in excess of standard holding, he was entitled to and Government sought to take possession and assign to landless poor. Aggrieved by the decision of Land Reforms Tribunal, the first petitioner filed case before the Primary Tribunal bearing No.C.C.No.1863/VJA/75. It appears, by order dated 17.08.1992, the Primary Tribunal rejected the contention that the father of first petitioner purchased the land in the year 1963 and that he was not given opportunity of hearing before declaring that Kodali Kotaiah was in possession of land in excess of standard holding and without following the due process, land in possession of family of the first petitioner cannot be declared as surplus by the Government.

3. Aggrieved thereby, appeal was preferred before the Land Reforms Appellate Tribunal, West Godavari District, Eluru (for short 'the Appellate Tribunal'). Before the Appellate Tribunal, it was contended that as per Rule 6 (1) of the Rules, 1974, petitioner is entitled to notice before declaration is finalized on standard holding of the original declarant and before possession is taken. It was also contended that the documents sought to be marked on behalf of the petitioner in evidence of land revenue paid by the father of first petitioner and first petitioner, much prior to 1971 and after 1971 and the agreement of sale dated 26.12.1975 was not accepted and such action of the Primary Tribunal is *ex-facie* illegal. It is further contended that petitioner wanted to adduce evidence on his behalf and also to cross-examine the Mandal Revenue Officer, Totlavaluru and Village Administrative Officer, North Valluru, to prove his possession but illegally it was not allowed and on these parameters the order of the Primary Tribunal is liable to be set aside.

4. All the contentions urged by the appellant were not found favour with the Appellate Tribunal and dismissed the appeal.

5.1. Miss.Nausheen Najm Us Sahar representing Sri M.V.Durga Prasad, learned counsel for the petitioners reiterates the submissions as urged before the Appellate Tribunal. By drawing the attention to provision in Rule 6 (1) of the Rules, 1974, she submits that it is mandatory for the primary Tribunal to put on notice the persons in possession (holding) before finalizing the issue of standard holding of a person. Whereas, admittedly petitioners were not put on notice and therefore, on that ground alone the entire proceedings get vitiated.

5.2. It is further contended that the Primary Tribunal erred in not permitting the petitioners to mark the documents in support of their contention that the land revenue is paid even before 1971 evidencing the sale of land and possession vested in them. This being a crucial document to support their contention that the subject land is not covered by the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Act, 1973') and the same cannot be included in the standard holding of the original declarant, ought to have been allowed to be presented and not allowing the same vitiates the entire proceedings. She further submits that the Appellate Tribunal erred in not appreciating this contention and erroneously rejected.

5.3. Learned counsel further submits that petitioners have been in possession of the subject land and there was an attempt made to dispossess them. But by virtue of the interim stay of dispossession granted by this Court in W.P.No.10625 of 1992, their possession is not disturbed and therefore, at this stage also matter can be directed to be re-considered by the Primary Tribunal, after affording due opportunity to the petitioners to present the case on the issue of possession and also acquisition of title to the land pursuant to purchase made on payment of full sale consideration.

6. It is not in dispute that Kodali Kotaiah was the original owner of land to an extent of Ac.2.00 in Sy.No.345/2 of North Valluru village. It is also not in dispute that Kodali Kotaiah gave declaration under the Act, 1973 and in the said declaration, he has also included this piece of land as belonging to him. Proceedings

under the Act, 1973 became final, in so far as Kodali Kotaiah is concerned and his standard holding was determined. In the process of determination of standard holding of Kodali Kotaiah, he was found to be in excess of land including subject land of an extent of Ac.2.00 and the decision to this extent has become final. The said decision is not under challenge.

7. As noted by the Appellate Tribunal, though original declarant approached the Primary Tribunal, the Appellate Tribunal and the High Court on several occasions, nowhere he mentions that he sold the property under the Possessory Agreement of sale, as sought to be contended by the petitioners. Since the original declarant was found to be holding land in excess of standard holding, the Primary Tribunal declared the same. The proceedings under the Act, 1973 have become final; the excess land vested in the State; and State is entitled to assign the said land to the needy persons.

8. Petitioners independently prosecuted the claim before the Primary Tribunal and the Appellate Tribunal contending that while finalizing the proceedings under the Act, 1973, in so far as Kodali Kotaiah is concerned, the first petitioner was not put on notice, as required by Rule 6(1) of the Rules and therefore, the entire proceedings get vitiated.

9. In support of the said contention, it was urged that father of the first petitioner purchased the land by oral agreement of sale in the year 1963 and on receipt of full sale consideration he was put in possession and since sale was made much prior to 24.01.1971, the provisions of the Act, 1973 are not attracted and this piece of

land ought not to have been computed against the extent of land held by Kodali Kotaiah. Thus, what was required to be considered by the Primary Tribunal as well as Appellate Tribunal was whether possession vested in the first petitioner and whether the first petitioner was entitled to put on notice, as required by Rule 6 (1) of the Rules.

10. The incidental question that arises is, even assuming that first petitioner was in possession, whether in an independent proceeding, can an individual challenge the finalization of issue of standard holding under the Act, 1973 against the original declarant.

11. In support of the contention that the first petitioner and his father were put in possession, reliance was placed on cist receipts for various years and the agreement of sale dated 26.12.1975. It was contended that this agreement of sale recognizes the oral sale entered between the parties in 1963 and vesting of possession. The factum of payment of cist for various years would show that father of first petitioner and petitioners were in possession while the proceedings were set in motion under the Act, 1973 and therefore, in terms of Rule 6 of the Rules, they ought to have been put on notice.

12. The Appellate Tribunal noticed that in the agreement of sale dated 26.12.1975, there were no recitals of earlier sale agreement entered into between the parties before 1975. The recitals would disclose that parties agreed to purchase land in the month of July, 1975 and from July to September, an amount of Rs.15,000/- was paid. It was also stated that in pursuant to the decree granted in

O.S.No.745 of 1971, Kodali Kotaiah became the owner of property. Having regard to these recitals, the Appellate Tribunal rejected the contention of alleged sale and possession. The Appellate Tribunal also considered the cist receipts. Except the first receipt, remaining receipts pertain to the period after 1971 and the 10 (1) Adangal discloses the name of Kodali Kotaiah as the owner and therefore, discounted the contention of the petitioners that they were put in possession and have become owners and noted that though properties stood in the name of Kodali Kotaiah, cist receipts were taken in the name of father of the first petitioner. The Appellate Tribunal observed that wrong receipts were obtained only to make a claim. The Tribunal also noticed that from the declaration given by original declarant in various proceedings and in the litigation prosecuted by him, nowhere, he has stated of sale being made by him. Thus, to attract the provision in Rule 6 (1) of the Rules, the factum of possession ought to be established and the material on record as assessed by the Appellate Tribunal would disclose that the petitioners miserably failed in establishing that they were in possession prior to 1971 and thereafter also, while the proceedings were pending under the Act, 1973. This is a finding of fact arrived at by the first appellate Tribunal on an analysis of the evidence on record. The said finding cannot be called as perverse.

13. Learned counsel further contended that in order to prove possession petitioners wanted to cross-examine the Mandal Revenue Officer and Village Revenue Officer, but they were not permitted. However, it is seen that the purpose of cross-examination, as stated by learned counsel for the petitioners, is to prove possession. As assessed by the Appellate Tribunal, the

petitioners miserably failed in proving the possession before or during pendency of the proceedings under the Act, 1973. Therefore, merely on this plea, the matter need not be remitted for consideration by the primary Tribunal.

14. Further, even according to the averments of the petitioners, they were put in possession of the subject land on an oral agreement to sell and formal agreement was recorded on 26.12.1975. But there was no sale deed executed and property was not transferred in favour of the petitioners prior to 24.01.1971. In other words, even according to the claim of the petitioners, they were enjoying the property by virtue of an agreement of sale. As held by the Hon'ble Supreme Court in "**State of Andhra Pradesh Vs Mohd. Ashrafuddin¹**", person in possession of the land by virtue of an agreement of sale, does not acquire right on the property and the original owner continues to be treated as owner of property for all practical purposes and therefore the extent of land covered by an agreement of sale also has to be treated as part of the land held by the original declarant, for the purpose of assessing the land held by him and to determine the standard holding under the Act, 1973. The Supreme Court also held that person in possession is also required to give declaration.

15. This issue has come up for consideration before the Hon'ble Supreme Court again in "**Begula Bapi Raju Vs State of Andhra Pradesh²**", and the Hon'ble Supreme Court reiterated the earlier view taken in **Mohd. Ashrafuddin**'. This issue has again come up for consideration before the Hon'ble Supreme Court in "**Yedida**

¹ AIR 1982 SC 913

² (1984) 1 SCC 66

Chakradhara Rao Vs State of Andhra Pradesh³ and the Constitution Bench affirmed the view taken in **Mohd. Ashrafuddin** and **Begula Bapiraju**, that if the original declarant, declares the land found to be in excess, then the land automatically vests in the Government. For any reason the declarant does not declare the excess land, it is open to the Government to identify any land as excess and take possession of the land.

16. Nothing is stated by the petitioners to show that this piece of land was not declared by the declarant as excess land and has not surrendered the same. If the declarant surrenders the land nothing further is required to be done and land automatically vests in the State. In terms of the provisions of the Act, 1973, assuming that petitioners were in possession, the limited right vested in the person in possession of land identified as excess land, is that he is entitled to cultivate the land during particular agricultural season and at the end of agricultural season, the possession of land has to be given back to the original owner and in turn the original owner was required to surrender the land to Government. Rule 9 of the Rules, further vests power in the original owner to request the Revenue Divisional Officer to ensure that the possession of land is delivered to him, by the person in possession, in the event of person in possession refusing to deliver possession. Thus, even according to Rule 9 of the Rules, possession has to be delivered voluntarily or by force. Whether this contingency is attracted is also not stated anywhere in the grounds urged in this Revision.

³ (1990) 2 SCC 523

17. Furthermore, it appears that possession of this piece of land was taken over by the State and State in turn assigned the land to the beneficiaries. The same is recorded in paragraph No.13 of the order of the appellate Tribunal. The beneficiaries are not made parties to this Revision. Third party interests have already accrued on account of assignment granted to them and in their absence, no declaration as sought for can be granted in favour of the petitioners, more so when the only issue is taking possession by Government and when before the Appellate Tribunal, petitioners failed to prove their possession.

18. For afore stated reasons, the Revision fails and is accordingly dismissed. There shall be no order as to costs.

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

21st December, 2017
Rds

P.NAVEEN RAO,J

