

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.972 OF 2004

Dated:13.12.2017

Between:

Havgappa (Died), S/o.Mahalingappa,
Chapta (K) Village,
Narayankhed Mandal, Medak District and another.

.. Petitioners

And

The Authorised Officer,
Land Reforms Tribunal,
Medak District at Sangareddy and another.

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**CIVIL REVISION PETITION No.972 OF 2004****ORDER:**

1st petitioner claims to have purchased land to an extent of Acres 8.15 guntas and 2nd petitioner purchased land to an extent of Acres 8.16 guntas in Survey No.128, Chapta Village, Narayankhed Mandal of Old Medak District. There was an agreement to sell in favour of the petitioners executed by the owner of the property by name Ramakrishna Rao, out of the sale consideration of Rs.8,000/-, each of the petitioners 1 and 2 paid Rs.7,500/-. On entering into the agreement of sale, possession was also delivered to them.

2. According to the petitioners, the purchase was made on 25.11.1969 i.e., much before 24.01.1971, from which date Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Act, 1973) came into force. However, the declarant was found in excess of the standard holding, to which he is entitled under the Act, 1973, to an extent of 10 Acres. In consequent to the finding arrived that the declarant was in excess of 10 Acres than the standard holding and as the declarant did not surrender the excess land, Government identified 10 Acres of land in Survey No.128, which was in possession of petitioners 1 and 2 as excess land. At this stage, the petitioners filed application

before the Land Reforms Tribunal stating that their land could not have been taken possession by the Government. It was contended that they being the bonafide purchasers of the land from Ramakrishna Rao, they are entitled to own the said land and the same could not have been identified as excess land. According to the petitioners, they have also filed declaration under the Act, 1973. They were not in possession of land in excess of the standard holding and to that extent, the competent authority has passed the orders. In the declaration filed by the petitioners, this land was also included and after computing this land, they were found to be not in possession of land in excess of the standard holding under the Act, 1973. That being so, the competent authority ought not to have identified the land in possession of the petitioners as excess land and taken possession.

3. The contention of the petitioners was not found favour with the Land Reforms Tribunal and an order was passed to that extent. Aggrieved thereby, petitioners earlier filed LRA.No.206 of 1994 holding that the petitioners were not heard and matter requires fresh consideration. The Appellate Tribunal remanded the matter to the lower Tribunal for consideration of the issue afresh. On consideration of the issue, the Tribunal reiterated its view. On appeal preferred against the said decision, the Appellate Tribunal confirmed the decision of the lower Tribunal.

4. Both the lower Tribunal as well as Appellate Tribunal placed reliance on the decision of the Supreme Court in ***State of Andhra Pradesh v. Mohd. Ashrafuddin***¹ to hold that even the person in possession after having entered into agreement of sale, even prior to 24.01.1971, has to give declaration of the land in his possession and until valid transfer of property is made before the cut-off date, the land has to be computed towards total extent of land owned by the original owner for the purpose of assessment of the standard holding under the Act, 1973. Therefore, the extent of land which petitioners claim to have purchased was also computed in determining standard holding of the original declarant by name Ramakrishna Rao and in the process, Ramakrishna Rao was found land to an extent of 10 Acres in excess of the standard holding and the said land vests in the Government. Aggrieved thereby, this revision is filed.

5. Learned counsel for the petitioner made the following submissions:

1. That petitioners being a bonafide purchasers of the land to an extent of 16.31 Acres and having made such purchase long prior to coming into force of the Act, 1973, the said land cannot be treated as part of the land holding of Ramakrishna Rao and therefore, the procedure followed in holding that Ramakrishna Rao was in excess of the standard holding to an extent

¹ AIR 1982 SC 913

of 10 Acres and the same should be surrendered is erroneous.

2. He would further submit that even assuming that Ramakrishna Rao was in excess of the standard holding, the competent authority ought to have taken possession of the land actually in possession of Ramakrishna Rao and could not have resorted to take possession of the land in possession of the petitioners having validly vested in them. More so, in their declaration this land was also shown and after including this land, the petitioners were not found in excess of the standard holding.
3. Even assuming that the land was validly declared as excess land, as the land is in possession of the petitioners, the land has to be reverted to the owner and in turn only owner should surrender, but, the competent authority cannot take possession of the land directly from the petitioners. In support of the said contention, learned counsel drawn attention of this Court to provision in Rule 9 of the Rules, 1974.

6. Per contra, learned Government Pleader submits that in view of the law laid down by the Supreme Court in ***Mohd. Ashrafuddin's case (supra)*** followed in ***Begulla Bapi Raju v. State of Andhra Pradesh***² and the Constitution Bench Judgment in ***Yedida Chakradhararao v. State of Andhra Pradesh***³, the land which is covered by an agreement of sale continues to be treated as land belonging to the original

² (1984) 1 SCC 66

³ (1990) 2 SCC 523

owner and the said land has to be computed as belonging to the original owner as well as the person in possession also requires to declare the said land under the Act, 1973. Since this principle is well settled, the procedure followed by the lower tribunals cannot be faulted and after following the due procedure only the 10 Acres of land was found in excess. He would further submit that as the original owner did not surrender the excess land, it is competent for the Government to take possession of the land in excess to the standard holding determined in favour of Ramakrishna Rao and while taking possession, it is the discretion of the competent authority to identify any particular land to take possession. As the petitioners have not acquired title to the property and as the land continues to vest in Ramakrishna Rao, the same can be taken over by the Government and the objection raised by the petitioners is not valid.

7. With reference to the contention of the learned counsel for the petitioners regarding the application of provision in Rule 9, learned Government Pleader would submit that the excess land vests in the Government and it being Government land, it is competent for the Government to take possession and the original owner has no say once land vested in the Government. The provision in Rule 9 has to be understood in the said manner. He further submits that the factual background as to how the Government took possession is not

borne out of record whereas application of Rule 9 depends on the factual aspects leading to taking possession by the Government.

8. As noted above, there are two limbs to the submission of the learned counsel for the petitioners. The first limb deals with the extent of holding of the original owner and the person in possession as per terms of agreement of sale and after paying substantial sale consideration, though not to full extent. The principle of law is well settled on this aspect. On analysing the scope of relevant provisions of Act, 1973. Hon'ble Supreme Court in ***Mohd. Ashrafuddin's case (supra)*** held that both the owner as well as the person in possession acquired after an agreement of sale are required to declare the very same land as holders of the land in different capacities. This principle is affirmed by the Supreme Court in ***Begulla Bapi Raju's case (supra 2)*** and the Constitution Bench of the Supreme Court in ***Yedida Chakradhararao's case (supra 3)***.

9. Thus, it is no more open to the learned counsel to contend that the land covered by the two agreements of sale dated 25.11.1969 could not have been computed towards the extent of holding of the original owner by name Ramakrishna Rao and the same is stated to be rejected.

10. With reference to the contention on application of Rule 9, it is seen from record and learned counsel for petitioner fairly admits that no contention was urged before the Land Reforms Tribunal and before the Appellate Tribunal. Even in the grounds urged in this revision also there is no specific plea raised on the alleged violation of Rule 9. A bare reading of Rule 9, even assuming that the same has application to the case on hand, would show that land identified as excess of holding but possession was vested on the person having an agreement of sale, after the end of agriculture season, the land reverts to the owner and in turn, the owner has to surrender the land to Government. For any reason, the person in possession do not deliver the possession to the owner, it is open to the owner to apply to the Revenue Divisional Officer to put him in possession of the land to enable him to surrender the land. Thus, it has to be first established that this procedure was not observed and that the land was not reverted to the owner and that owner has not given a complaint to the Revenue Divisional Officer to deliver possession and by following the procedure, possession was not delivered. These are all questions of fact which have to be specifically pleaded before the initial Tribunal and Appellate Tribunal. Legal submission, by relying on provision in Rule 9, can be urged based on foundation of facts already laid before primary tribunal. In the absence of material facts on record this court cannot appreciate the said contention.

11. Even otherwise, as rightly contended by the learned Government Pleader, once an assessment is finalised and it was found that the original declarant was having land in excess of standard holding to the extent of 10 Acres, it is obligatory on the part of the declarant to surrender excess land on his own and if he fails to surrender the excess land, it is for the competent authority to identify the land and take possession. However, court is not going into this aspect, since, as noted above, no foundation was laid before the tribunals with reference to possession aspect. This court cannot go into issue of possession and cannot appreciate legal submission made across the bar in the absence of any factual foundation laid before the Tribunals.

12. In ***Appineni Vidyasgar v. State of Andhra Pradesh and others***⁴, the Supreme Court held 'it cannot be disputed that the land in question had not been validly transferred in favour of the appellant and, therefore, the erstwhile owner in the absence of the valid sale deed continued to be the holder of land'.

13. In terms of the said declaration by the Supreme Court, it is safe to conclude that the original owner continues to be the holder of land and if that is so, the land can be taken possession from the original owner, in the absence of surrender by the original owner.

⁴ (2004) 11 SCC 186

14. Thus, on true and correct assessment of the facts on record, I do not see any error committed by the original Tribunal as upon that appellate Tribunal in upholding taking possession of the land found in excess of the standard holding of Ramakrishna Rao in accordance with the Act, 1973. The revision is accordingly dismissed.

15. Miscellaneous petition pending consideration, if any, in this case shall stand closed as consequence. No order as to costs.

13.12.2017
SS



P.NAVEEN RAO, J