

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.3348 of 2016

ORDER :

This Revision is under Section 21 of the Land Reforms (Ceiling on Agricultural Holdings) Act,1973 (for short “the Act”) assailing the order dt.24-04-2015 in L.R.A.No.1 of 2012 of the Land Reforms Appellate Tribunal-cum-II Additional District Judge, West Godavari at Eluru.

2. One V.Radhakrishna Murthy was the declarant on the file of the Land Reforms Tribunal-cum-Revenue Divisional Officer, Bandar in C.C.No.2386/D/75. He had three daughters by name Ch.Kokila Kumari, T.Vasudha Rani and T.Prabhu Kishorni. Ch.Kokila Kumari was the eldest daughter and she was born on 08-12-1955. The petitioner is the daughter of Ch.Kokila Kumari.

3. V.Radhakrishna Murthy, the declarant, was declared as surplus holder of land to the tune of 0.1753 Standard Holding vide proceedings dt.20-01-1977 of the Land Reforms Tribunal.

4. A show cause notice was issued to the declarant on 07-07-1977 to show cause why an extent of Ac.3.16 cents in R.S.No.66 part of Ayyanki village should not be taken possession from him.

5. Thereafter Form-VIII notice was issued on 22-07-1977 by the Land Reforms Tribunal as the declarant did not give any reply

to the notice dt.07-07-1977 and it was published in all conspicuous places and by beat of tom tom on 31-07-1977.

6. Thereafter proceedings dt.21-11-1977 was issued directing the Land Reforms Tribunal and Tahsildar, Divi to take further action to take possession of the above land. The Tahsildar, Divi was also directed to submit Form-X in token of having taken possession of the land after obtaining orders from the Revenue Divisional Officer, Bandar in Form-IX.

7. The declarant then filed an appeal before the Land Reforms Appellate Tribunal, Machilipatnam in L.R.A.No.105 of 1978 challenging the order of the Land Reforms Tribunal dt.20-01-1977 contending that the inclusion of an extent of Ac.16.04 cents of Rayadurga Taluk in his holdings is not correct and that he was having only Ac.7.14 cents.

8. L.R.A.No.105 of 1978 was dismissed on 24-07-1979. The declarant questioned the same in C.R.P.No.5892 of 1979 before this Court. The High Court allowed the Revision and remanded the matter to the Primary Tribunal and directed it to give notices to the other brothers of the declarant and widow of one of the brothers of the declarant and to verify the declarations filed by the brothers of the declarant with regard to the lands at Rayadurga Taluk. It directed that if the lands at Rayadurg Taluk have not been accounted in the declarations filed by his brothers, that land will have to be treated as surplus and if his brothers have not filed any declaration, then they

shall be permitted to file fresh declaration and then the Primary Tribunal shall dispose of the matter afresh after consideration of the declaration.

9. Thereafter fresh enquiry was conducted and by orders dt.06-11-1982, the Primary Tribunal confirmed its earlier order. It held that there were no grounds to believe that the declarant was holding Ac.7.14 cents in Rayadurga Taluk and not Ac.16.04 cents. Notice under Form-VI was issued to the declarant to surrender the excess land equivalent to 0.1753 SHs.

10. The declarant again filed L.R.A.No.181 of 1982 before the Land Reforms Appellate Tribunal, Machilipatnam. That appeal was dismissed on 13-01-1984. Then notice was again issued to the declarant to surrender 0.1753 SHs informing that if he fails to surrender the land, as per the choice of the Government, the land would be taken from him.

11. The declarant did not file surrender statement. So, proceedings were issued to the Special Deputy Tahsildar, Land Reforms, Divi Taluk to select suitable land from the holding of the declarant.

12. The declarant then filed C.R.P.No.1117 of 1984 before this Court. He also filed an application dt.25-07-1987 before the Primary Tribunal stating that he is having 3 daughters and no male issues, that he has gifted all his lands at Krishna District to his daughters and for want of records, he needed some time for

verification and that thereafter he would file surrender statement. Though time was granted, he did not choose to file any surrender statement.

13. Then notice in Form-VIII was published on 11-09-1987 by the Government selecting Ac.3.16 cents in R.S.No.66/1 of Ayyanki Village. The declarant filed objections thereto reiterating his earlier contention that he had only Ac.7.04 cents in Nagalapuram village of Rayadurg Taluk of Anantapuram District and that the statement of the Village Karanam, Ayyaki that he was having Ac.16.04 cents in the said village is not correct. This contention was not taken into account since the issue had already been decided by the Primary Tribunal and by the High Court. These were not accepted and selection of suitable surplus land by the Special Deputy Tahsildar was confirmed and approved under Section 10(4) of the Act vide order dt.24-11-1987 by the Primary Tribunal.

14. The District Collector, Krishna gave direction to the Revenue Divisional Officer, Bandar to take possession of the surplus land for assigning the same to the landless poor persons.

15. The declarant then filed C.R.P.No.92 of 1988 before this Court. This Court granted stay of taking of possession of the subject land. Simultaneously declarant also filed an appeal before the Land Reforms Appellate Tribunal, Machilipatnam in L.R.A.No.65 of 1987 against the order dt.24-11-1987 of the Land Reforms Tribunal.

16. L.R.A.No.65 of 1987 was dismissed on 15-06-1992 and C.R.P.No.92 of 1988 filed by the declarant was dismissed on 25-11-1991.

17. The declarant then filed surrender statement that he is ready to surrender the land at Sreedharagutta village and also Nagalapuram village of Rayadurga Taluk of Anantapuram District and informed the Primary Tribunal to take possession of that land instead of land covered by R.S.No.66/1 of Ayyanki village at Krishna District.

18. He also filed C.R.P.No.2571 of 1992, which was disposed on 08-12-1995 observing that the Authorities shall accept the lands proposed by the declarant, if they are equal in extent to the surplus and if they are unencumbered, and if the lands proposed are less in extent than the surplus, the Authorities are at liberty to proceed against the lands at Divi Taluk also to the extent of balance only.

19. In view of this order, a suitability report for surrender was called for by the Mandal Revenue officer, Rayadurga Mandal of Anantapur District. A report was submitted by the Tahsildar, Bommanahal Mandal of Anantapur District and D.Hirchal Mandal Tahsildar that there is no land in the name of the declarant in that District.

20. Consequently, proceedings for taking over the lands of the declarant of extent Ac.3.16 cents in R.S.No.66/1 of Ayyanki village, which was selected, were initiated. This land was found to be

in possession of the petitioner and it was also found that the declarant had transferred the land in favour of his daughter Ch.Kokila Kumari and she in turn settled the property in favour of the petitioner during the pendency of all the proceedings referred to above.

21. Notice was therefore issued to petitioner and enquiry was conducted. The petitioner filed her explanation through her counsel in the enquiry stating that she never purchased any land from the declarant, that she got Ac.9.81 cents of Ayyanki village of Movva Mandal by way of settlement deed dt.10-01-1999 executed by her mother, that she was in possession of the above land and that her mother is Smt.Chalasani Kokila Kumari, the daughter of the declarant, and she was in possession of the selected land of Ac.3.16 cents in R.S.No.66/1.

22. Therefore the Revenue Divisional Officer, Bandar-cum-Land Reforms Tribunal, Bandar held that when there is excess land in the holding of the declarant to the tune of 0.1753 SHs, the declarant, without surrendering it, stealthily settled his property to his daughter Ch.Kokila Kumari and she in turn gave it to the petitioner. He held that since it is ceiling surplus land, neither the declarant nor Ch.Kokila Kumari had any right to convey it to petitioner particularly when Form-VIII notice was published long back on 11-09-1987. He held that the declarant had challenged this notice before the High Court in C.R.P.No.2571 of 1992 and without waiting for the verdict of the High Court, he settled the property to his daughter and she in turn

settled it to her daughter i.e. Petitioner. He held that the declarant cannot escape from surrendering the surplus land to Government, that the settlement deed dt.10-01-1999 relied upon by the petitioner was null and void; since the land of Ac.3.16 cents in R.S.No.66/1 was found in occupation of the petitioner, and since the High Court did not find any fault with the action taken by the Primary Tribunal in proceedings dt.24-11-1987, the said proceedings continue to hold good. Therefore orders dt.31-03-2012 in Form-IX under Rule 8(1) of the Act was issued by the Primary Tribunal for taking possession of this land.

23. This was questioned by the petitioner before the Land Reforms Appellate Tribunal-cum-II Additional District Judge, West Godavari at Eluru in L.R.A.No.1 of 2012.

24. It was contended in the said appeal that the declarant allotted Ac.3.16 cents in R.S.No.66/1 of Ayyanki village towards his second daughter T.Vasudha Rani towards Pasupu Kumkuma and she in turn sold away the sand land to one Donepudi Venkata Rajendra Prasad. It is contended that total holding of declarant was Ac.9.80 cents, of which he gave Ac.4.00 cents to Ch.Kokila Kumari, mother of appellant, Ac.3.16 cents was given to T.Vasudha Rani and balance Ac.2.64 cents was gifted to T.Prabhu Kishorini towards Pasupu Kumkuma. It is also contended that except the mother of petitioner Ch.Kokila Kumari, the other two daughters of the declarant sold their respective shares and ultimately, total extent of Ac.9.80 cents was in

possession of the family of the petitioner and the entire land was given to the petitioner at the time of her marriage towards Pasupu Kumkuma. It was contended that the Primary Tribunal did not serve notice to the persons interested except the petitioner and notices should have been given by it to all the daughters of the declarant. It is also stated that once the original declarant died, proceedings cannot be continued without adding his legal representatives. It is also stated that the mother of the petitioner Ch.Kokila Kumari was born on 08-12-1955; as on 01-01-1975, she was a major; and therefore she was entitled to get one Standard Holding on par with her father, the declarant; and that all orders determining excess holding of the declarant are not correct and they have to be reconsidered in view of the amendment of the Hindu Succession Act, 1956 and in view of the definition of the 'Family Unit' under Section 3(f) of the Act.

25. By order dt.24-04-2015, the said appeal was dismissed by the Land Reforms Appellate Tribunal.

26. The appellate Tribunal referred to the order dt.08-12-1995 in C.R.P.No.2571 of 1972, which permitted the Authorities to accept the lands proposed by the declarant, if they are equal in extent to the surplus and are unencumbered and if the lands are less in extent than the surplus, granting liberty to the authorities to proceed against the lands in Divi Taluk also to the extent of the balance only.

It then observed that the proceedings for deciding the excess holding of declarant and taking possession of the excess land held by the declarant were pending for the previous 35 years, that the above order of the High Court indicated that the determination of extent of the declarant possessing land in excess of the Standard Holding had attained finality, that the declarant himself had expressed his readiness to surrender the excess land and after this event, it is not open to the declarant or his legal heirs to dispute the decision of the Primary Tribunal that the declarant was not holding excess land.

It noted that the declarant himself was prepared to surrender lands possessed by him at Rayadurga of Anantapur District and there is no question of reconsideration of the issue whether the declarant was holding land in excess of the Standard Holding again and it is barred by principle of *res judicata*.

It held that the contentions raised in the appeal by the petitioner that Ch.Kokila Kumari, her mother, was a major by the date of commencement of the Act and she was entitled to have a separate Standard Holding or that her grandfather, the declarant, gave property by way of Pasupu Kumkuma to his 3 daughters, that the family of the petitioner gave entire Ac.9.80 cents to the petitioner at the time of her marriage as Pasupu Kumkuma, are all new facts and that at the stage of surrender proceedings, new facts cannot be asked to be adjudicated again and it would be an abuse of process of law.

It held that prior to passing of the impugned order by the Primary Tribunal, the situation was that the declarant himself has offered his land at Anantapur District and the High Court in C.R.P.No.2571 of 1992 had directed the Government Authorities to consider the acceptability of surrender of land offered by the declarant in Anantapur District.

Since, on verification, it was found that no land of the declarant was available in Anantapur District, the land offered by the declarant could not be accepted and so the declarant was liable to surrender the land at Krishna District selected by the Government authorities.

It held that the proceedings to decide the excess holding of the declarant was completed during the lifetime of the declarant and at the stage of surrender proceedings, he offered certain lands and when those lands were found not suitable, the Authorities were justified in proceeding against the lands admeasuring Ac.3.16 cents in R.S.No.66/1 of Ayyanki village. It therefore held that the contention of petitioner that all the legal heirs of the declarant were not informed, cannot be accepted.

27. Challenging the same, this Revision is filed.

28. Sri B.V.Subbaiah, learned Senior Counsel, appearing for the petitioner, contended that:

(i) the petitioner's mother Ch.Kokila Kumari was born on 08-12-1955 and she was a major as on 01-01-1975 when the Act came into

operation and she was entitled to get one standard holding on par with her father, the declarant. He contended that under a settlement deed dt.10-01-1999, the petitioner's mother had settled an extent of Ac.9.81 cts including the extent of Ac.3.16 cts in R.S.No.66/1 of Ayyanki village, Movva Mandal, Krishna District. He stated that no notice had been given to the petitioner's mother by the respondents and if the petitioner's mother was entitled to one standard holding, the declarant's holding would have been correspondingly reduced and there was no necessity for the petitioner to surrender any land.

(ii) the subject property was joint family property and devolved on the declarant from his father. Under Section 29-A of the Hindu Succession Act, 1956 as introduced in the State of Andhra Pradesh by A.P.Act 13/1986, the major daughter of the declarant (mother of the petitioner) was entitled to an equal share with the declarant and so the very computation of holding of the declarant as surplus land holder to the extent of 0.1753 standard holdings is contrary to law and unsustainable.

(iii) that no opportunity was given to the petitioner to prove these facts by the primary Tribunal before passing order dt.31-03-2012 or by the Land Reforms Appellate Tribunal before passing order in L.R.A.No.1 of 2012 on 24-04-2015 and this vitiates their orders.

(iv) though the declarant also died, legal representatives of the declarant were not issued any notice and the order passed in such

circumstances by the respondents are null and void and deserved to be set aside.

He contended that both the primary Tribunal as well as the LRAT did not consider the matter from this perspective and wrongly applied the principle of *res judicata* and came into an erroneous conclusion that the petitioner should surrender Ac.3.16 cts in R.S.No.66/1 of Ayyanki village which she obtained under the settlement deed dt.10-01-1999 executed by her mother. He relied upon **Nimmagadda Sambasiva Rao Vs. State of A.P., Land Reforms, Guntur¹** and **Posina Ramachandraiah and others Vs. State of A.P. and another²**.

29. Learned Government Pleader for Arbitration appearing for respondents refuted the above contentions. He contended that the holding of the declarant had been determined on 20-01-1977 itself; that this finding was confirmed up to the High Court in C.R.P.Nos.5892 of 1979, 1117 of 1984 and 92 of 1988. Once the determination of the excess holding of the declarant attained finality up to the High Court and the declarant himself offered surrender of land which was considered in C.R.P.No.2571 of 1992 by the High Court, there is no question of reopening the excess holding determination as regards the declarant on the basis of the pleas raised by the petitioner for the first time. He contended therefore that the

1 1999 (4) ALD 321

2 2001 (2) ALD 502

L.R.A.T. had rightly applied the principle of *res judicata* and dismissed the appeal filed by the petitioner.

30. From the above rival contentions, the following points for consideration arise:

(a) Whether it is permissible to reopen the findings as regards the excess holding of the declarant at the instance of the petitioner at the surrender stage under Section 10 of the Act?

(b) Whether the principle of *res judicata* was rightly applied by the L.R.A.T.?

(c) Whether the petitioner is entitled to retain the extent of Ac.3.16 cts in R.S.No.66/1 which was obtained by her under the settlement deed executed by her mother Ch.Kokila Kumari and

(d) Whether the orders passed by the primary Tribunal and appellate Tribunal are sustainable?

Points (a) and (b):-

31. Before I deal with the contentions, the following admitted facts need to be noted:

32. The declarant is maternal grandfather of the petitioner. He was declared as a surplus holder of the land in C.C.2386/D/75 to the tune of 0.1753 standard holdings in proceedings dt.20-01-1977.

33. The declarant questioned the order dt.20-01-1977 of the primary Tribunal determining his surplus holding at this stage before the Land Reforms Appellate Tribunal, Machilipatnam in L.R.A.No.105 of 1978 seeking inclusion of Ac.16.04 cts of Rayadurga Taluk in his holding. This was dismissed on 24-07-1979 on the ground that he is having only Ac.7.14 cts but not Ac.16.04 cts in Rayadurga Taluk as computed in his holding.

34. He then filed C.R.P.No.5892 of 1979 before this Court. The High Court remanded the case to the primary Tribunal with a direction to give notices to the declarant's brothers and also to the widow of another brother of declarant, and to verify the declarations filed by the brothers of the declarant in regard to Rayadurga Taluk lands observing that if it transpires from the declaration filed by them that Rayadurga Taluk lands have not been shown therein, those lands will have to be treated as surplus and liable for surrender and it should be accepted under Section 10 of the Act by the Government. Thereafter, enquiry was conducted by the primary Tribunal and orders were passed on 06-11-1982 confirming the initial order of primary Tribunal dt.20-01-1977. It held that there are no merits in the contention of declarant that he is having only Ac.7.14 cts in Rayadurga Taluk, but not Ac.16.04 cts. Along with this order again Form VI notice dt.06-11-1992 under Rule 7 (1) was issued to the declarant to surrender the excess land equivalent to 0.1753 standard holdings on or before 22-11-1992.

35. The declarant questioned it in L.R.A.No.181 of 1982 before the L.R.A.T., Machilipatnam. It dismissed it on 31-01-1984.

36. This was questioned in C.R.P.No.1117 of 1984 before this Court which was dismissed on 20-02-1987. Thereafter, notice was issued to the petitioner on 23-05-1987 for surrendering of the excess land determined.

37. Since the petitioner failed to comply with the notice, the Special Deputy Tahsildar selected land of Ac.3.16 cts in R.S.No.66/1 of Ayyanki village. The declarant then filed objection petition before the appellate Tribunal and it was negatived by order dt.16-12-1987 in L.R.M.P.No.172 of 1987 in L.R.A.No.65 of 1987.

38. Challenging the same, the declarant filed C.R.P.No.92 of 1988 before this Court. In the said Revision, he contended that this Court in C.R.P.No.5892 of 1979 while remanding the matter to the primary Tribunal, gave opportunity to the other brothers of the petitioner to conduct enquiry but no such opportunity was given and the matter was decided; and so, the impugned proceedings are not valid and liable to be set aside. This contention was rejected in C.R.P.No.92 of 1988 which was dismissed on 25-11-1991. I secured copy of the order dt.25-11-1991 in C.R.P.No.92 of 1988 from the records of the High Court and perused the same. This Court held therein that when the matter was earlier remanded, the primary

Tribunal did conduct enquiry and held against declarant. The declarant filed an appeal which was also dismissed, that he challenged it in C.R.P.No.1117 of 1984 which was also dismissed and that the order of the primary Tribunal that the declarant was holding excess land of 0.1753 of standard holdings was correct. It held that the said proceedings had become final and the question whether the declarant has got excess land or not cannot again be gone into and he ought to have raised it in C.R.P.No.1117 of 1984 and since he failed to do so, it is barred by principle of *res judicata*.

39. Thus, the initial determination of the primary Tribunal in its order dt.20-01-1977 that the declarant's family holds excess of 0.1753 SH can be said to have attained finality when C.R.P.No.1117 of 1984 was dismissed on 20-02-1987 itself. Therefore, no relief had been granted to him in C.R.P.No.92 of 1988 which was dismissed on 25-11-1991.

40. Under the scheme of the Act, once there is a determination of holding of a declarant under Section 9 of the Act by the primary Tribunal on the basis of a declaration filed by a declarant under Section 8 and such determination by the primary Tribunal has attained finality, the same cannot be reopened in subsequent proceedings under Section 10 of the Act which deals with surrender of the excess land determined by the primary Tribunal. The proceedings under Section 10 of the Act are in the nature of execution and relate to recovery of possession of the surplus land determined by the

authorities under the Act. Thereafter, the declarant cannot set up a new plea.

41. The Supreme Court in **Konda Venugopala Raju Vs. State of Andhra Pradesh**³, has held that once proceedings for determination of excess land held by a land owner had attained finality at the stage of surrender of the surplus land, the declarant cannot set up a new plea. It held that under Section 9, once the order of determining the surplus land had become final, the person holding the land in excess of the prescribed ceiling area is liable to surrender the excess land hold by him as enjoined under Section 10 of the Act and at that stage, there is no further provision under the Act to reopen the order passed under Section 9 except to correct clerical or arithmetical mistakes.

42. Once the order determining holding of declarant as 0.1753 SH excess in L.R.A.No.181 of 1982 of the L.R.A.T., Machilipatnam had attained finality on 31-01-1984, in view of the above decision of the Supreme Court, it was not open to the declarant or any of his family members to contend that there was an error in computation of the holding of the declarant and that needs to be corrected.

3 AIR 1997 S.C. 3126

43. Therefore, it is not permissible to reopen the findings as regards the determination of excess holding of the declarant at the instance of the petitioner at the surrender stage under Section 10 of the Act. Therefore, the principle of *res judicata* was rightly applied by the L.R.A.T. in rejecting the contention of the petitioner seeking exclusion of the selected Ac.3.16 cts in R.S.No.66/1. Therefore, points (a) and (b) are answered against the petitioner and in favour of respondents.

Point No.(c) and (d):-

44. Under these points, I will consider whether the petitioner is entitled to retain Ac.3.16 cts which is obtained by her under settlement deed obtained from her mother Ch.Kokila Kumari.

45. The basis of this pleading is that the mother of the petitioner Ch.Kokila Kumari who is the daughter of the declarant was borne on 08-12-1955 and was a major on 01-01-1975 when the Act came into operation.

46. No material is placed to prove the date of birth of Ch.Kokila Kumari either before the primary Tribunal or before the appellate Tribunal. Unless there is evidence adduced in that regard by the petitioner, such a question cannot be gone into assuming for the sake of argument without conceding that such an issue can be gone into at surrender proceedings stage. Therefore, the argument of the learned counsel for the petitioner on the basis of Section 27-A of the

Hindu Succession Act, 1956 as amended by A.P.Act 13/1986 to establish to claim for the benefit under the said Act, cannot be considered.

47. Even otherwise burden of proof lies on the petitioner to establish that her mother was unmarried before 15-05-1986. This is because, under the said amendment, the benefit of Section 29-A can be invoked only by major daughters, if they were not married prior to 15-05-1986, the date of commencement of Section 29-A of the A.P.Act.No.13/1986.

48. Since the petitioner herself is aged about 40 years in 2015 (when the Revision Petition was filed), she must have been born in 1975 after her mother's marriage. So by 1975 itself, petitioner's mother Ch.Kokila Kumari would have got married. So this plea is without any merit.

49. Also no evidence is also placed by the petitioner as to when the declarant had transferred the land Ac.3.16 cts in R.S.No.66/1 of Ayyanki village to the petitioner's mother as contended by the petitioner.

50. Under Section 17 of the Act, any such alienation would be null and void and such alienation is liable to be disregarded.

51. Consequently a further alienation by petitioner's mother to her is equally null and void and no title would pass to the petitioner

under such a transfer by her mother under the settlement deed dt.10-01-1999.

52. Coming to the submission of the petitioner about the death of the declarant and absence of notice to the legal representatives of the declarant, admittedly the declarant was alive at the time when his excess holding was determined on 20-01-1977 as well as on 20.2.1987 when C.R.P.No.1117 of 1984 was dismissed confirming the determination of the excess holding of the declarant. He was also alive on 25-11-1991 when C.R.P.No.92 of 1988 filed by him was dismissed by this Court and the issue relating to the surrender of Ac.3.16 cts was urged in C.R.P.No.92 of 1988 also by the declarant himself.

53. Therefore, once C.R.P.No.92 of 1988 was dismissed and the contention of the declarant about the selection of the said land was negatived by this Court and the same had attained finality, the petitioner cannot be allowed to canvass that proceedings under the Act have become a nullity.

54. Admittedly the petitioner who was in possession of this extent of land was given notice by the primary Tribunal before passing the order on 31-03-2012. Therefore, no prejudice can be claimed by the petitioner. Therefore, both these points are answered against the petitioner and in favour of the respondents.

55. Consequently, I do not find any merit in the Revision Petition and the same is accordingly dismissed at the admission stage.

No costs.

56. Miscellaneous applications pending if any in this Revision shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 03-03-2017

Vsv/Kvr

