HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1703 of 2012

ORDER:

This Civil Revision Petition is filed by the petitioners under Section 21 of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, 'the Act') challenging the order, dated 14-12-2011 passed in L.R.A.No.52 of 1992 filed challenging order in I.A.Nos.12 and 13 of 1992 in C.C.No.1818/KKL/75, by the Chairman, LRAT-cum-II Addl. District Judge, West Godavari at Eluru confirming the order, dated 16-11-1992 passed in I.A.Nos.12 and 13 of 1992 in C.C.No.1818/KKL/75 by the Additional Revenue Divisional Officer (Land Reforms), Bandar.

The case of the petitioners is that petitioners 2 to 4 are the sons of one Ravuri Somayya, who died on 25-02-1972. The 3rd respondent is the mother of petitioners 2 to 4. After the death of father of the petitioners 2 to 4, the 3rd respondent filed declaration in respect of the properties held by late Ravuri Somayya claiming that she is the owner of all the properties and she is the guardian of all the children of late Ravuri Somayya. Late Ravuri Somayya had two daughters in addition to petitioners 2 to 4 born during wedlock and they become majors. On account of the final order passed by the Land Reforms Tribunal the petitioners were deprived of their due share. It is contended that at the time of filing declaration before the Tahsildar, Land Reforms the will, dated 09-04-1992 deposited by late Ravuri Somayya with the Sub-Registrar office was not within the knowledge but a copy was obtained latter.

As per the terms, the 1st petitioner was appointed as trustee of the properties. The properties were given to all the sons of late Somaiah in equal moieties. As petitioners 2 to 4 were minors, their individual property was entrusted to the 1st petitioner to manage them as trustee and handover the same to the petitioners 2 to 4 after they attain majority. In these circumstances any declaration or statement filed by the 3rd respondent with regard to the ownership of the properties owned by late Somaiah is wholly illegal and does not bind the petitioners 2 to 4 and that the petitioners are entitled to claim their independent share as one standard holding. Treating the entire family as one family unit permitting to retain one standard holding is an error apparent on the face of the record and sought for reopening the order passed by the Tribunal-cum-II Additional District Judge, West Godavari at Eluru under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act.

I.A.Nos.12 and 13 of 1992 were dismissed by the Revenue Divisional Officer and the same was confirmed by the Land Reforms Appellate Tribunal in L.R.A.No.52 of 1992 on 14-12-2011. Challenging the said order, the present Civil Revision Petition is filed under Section 21 of the Act, reiterating the grounds urged in the appellate Court, mainly contended that each one of them are entitled to one standard holding in view of Section 7 (2) of the Act, 1973. But the appellate Court and the Additional Revenue Divisional Officer (Tribunal) did not consider the request made by the petitioner in proper perspective and committed an error in deciding the holding of the family treating all the minors including the major – 3rd respondent as determined permitting to retain one standard holding by the family as one unit.

During hearing Sri N. Siva Reddy, learned counsel for the petitioners contended that the petitioners are entitled to claim benefit under Section 7 (2) of the Act, 1973. But this fact is not considered by the Tribunal and appellate Court in proper perspective and prayed to set aside the order and allowing the petition filed by the petitioners.

Rule 16 A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1973 (for short, 'the Rules') deals with power of the Tribunal. All proceedings before the Revenue Divisional Officer, the District Collector, Tribunal or the Appellate Tribunal shall be summary and shall be governed, as far as may be, by the provisions of the Code of Civil Procedure,

1908. Sub Rule 5 of Rule 16 of the Rules, 1973 deals with the power of Revenue Divisional Officer, the District Collector, Tribunal and the Appellate Tribunal to make orders incidental or ancillary to the decisions of such officer or authority and to correct any clerical or arithmetical mistakes in judgments or errors arising therein from any accidental slip or omission, either of its own motion or on the application of the parties.

The present petition is filed before the Additional Revenue Divisional Officer under Rule 16 (5) of the Rules, 1973 and Clause (a) of Sub Rule 5 has no application. The petitioners claimed relief taking advantage of Clause (b) but it permits only correction of any clerical or arithmetical mistakes in judgments or errors arising therein from any accidental slip or omission, either of its own motion or on the application of the parties but not any other mistake beyond scope of Clause (b). Here, the non-consideration of the will evading trust, circumventing that it is not covered by Clause (b) of Rule 16 (5) of Rules.

A similar question came up before this Court in ***Meddineni Anjaiah v. State***[1], wherein this Court consider the scope of Rule 16 (5)(b) held that improper classification of lands cannot be said to be a mistake or error to be rectified by exercising the power under Rule 16 (5) of the Rules and when

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[1] 1980 (1) APLJ 412

an application is filed at the time of surrender proceedings for rectifying the wrong classification of lands having failed to urge the same at the original enquiry in any of the Tribunal is not maintainable.

Similarly, in case of ***Authorized Officer Land Reforms Tribunal, Kakinada v. A. Sreeramachandra Prabhu***[2], this Court held that the Tribunal has no power to reclassify the lands after surrender proceedings have been completed and the matter has become final in revision also.

There is long line of judgments of this Court regarding powers of the Tribunal or appellate authority under Rule 16 (5)(b) of the Act. Those judgments are against the petitioners' case.

In the present case the petitioners are not having a separate holding in view of Section 7(2) of the Act in terms of the will creating trust in favour of these petitioners. Section 7 of the Act deals with special provisions in respect of certain transfers, etc., already made. According to Section 7 (1) of the Act any transfer after on or before the notified date i.e., 24-01-1971 whether by way of sale, gift, usufructuary mortgage, exchange, settlement, surrender or in any other manner whatsoever, any land held by him or created a trust

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[2] 1989 (3) ALT 38 (NRC)

of any land held by him, then the burden of proving that such transfer or creating of trust has not been effected in anticipation of, and with a view to avoiding or defeating the objects of any law relating to a reduction in any ceiling on agricultural holdings, shall be on such person, and where he has not so proved, such transfer or creation of trust, shall be disregarded for the purpose of the computation of the ceiling area of such person. Sub-Section 2 is an exception to Sub Section 1 of Section 7 of the Act. According to which any alienation made by way of sale, lease for a period exceeding six years, gift, exchange, usufructuary mortgage or otherwise, any partition effected or trusted created of a holding or any part thereof, or any such transaction effected in execution of a decree or order of a Civil Court or any award or order of any other authority, on or after the 2nd May, 1972 and before the notified date, in contravention of the provisions of the Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act, 1972 shall be null and void.

In the present case the will allegedly executed by late Somayya and deposited with the Registrar was on 09-04-1992 long after the notified date and he died on 25-02-1972. Therefore, this controversy would not fall within Rule 16 (5)(b) of the Rules framed under the Act to exercise the power which can be equated with the power of Section 152 of Code of Civil

Procedure. More over, when father of petitioners died on 25-02-1972 execution of will and deposit with Sub-registrar on 09-04-1992 is unbelievable and would not enure any benefit to the petitioners.

In similar situation, Full Bench of this Court in ***Digambar Rao and another v. Government of A.P., through the Authorized Officer (Land Reforms), Nizamabad***[3], wherein Full Bench of this Court took the view that in the absence of any provisions, a power of substantive review does not exist in a statutory authority. Rule 16 (5)(b) of the Rules, as noticed hereinabove, confers a limited power upon the Tribunal, which power is akin to the provisions of Section 152 of Code of Civil Procedure, 1908. So far as the power of review of Civil Courts is concerned, the same is not governed by Section 152 of the Code, but is governed by the provisions of Section 114 read with Order XL VII, Rule 1 thereof. It must, therefore, be hold that no substantive power of review inheres in the Tribunal or appellate Tribunal.

In terms of Rule 16 (5)(b) of the Rules, keeping the law declared by this Court in various judgments referred above, the Tribunal rightly exercise its jurisdiction that conferred on it under Rule 16 (5)(b) of the Act and the Rules framed thereunder.

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[3] 2001 (6) ALT 226 (F.B.)

Since the mistake pointed out by the petitioners is neither clerical nor arithmetical mistake in judgments or errors arising therein from any accidental slip or omission, therefore, negation of relief by the Additional Revenue Divisional Officer, Land Reforms Tribunal cannot be faulted, which is confirmed by the Appellate Court in L.R.A.No.52 of 1992.

The relief claimed by the parties is virtually reopening of the entire proceedings including declaration filed by the 3rd respondent – mother of the petitioners 2 to 4 and even otherwise by the notified date there was no actual alienation since the will came into operation upon the death of Somaiah, father of petitioners 2 to 4 and husband of respondent No.3. Hence, it could not fall within the ambit of alienation as contemplated under Section 7 (2) of the Act or creation of any trust by virtue of the said will is only a testamentary dispossession, which came into force on the date of the death of Somayya and vesting would take place only consequent upon the death, which is allegedly took place in the year 1972, therefore, as on the notified date there was no alienation virtually. Hence, I find no merits in this Civil Revision Petition warranting interference with the findings recorded by both Additional Revenue Divisional Officer-cum-Land Reforms Tribunal and affirmed by appellate authority in

L.A.R.No.52 of 1992, exercising the power under Article 227 of Constitution of India, which is supervisory in nature, as such, I find no such ground to interfere with the orders under challenge. Hence, the Civil Revision Petition is devoid of merits and deserves to be dismissed.

Accordingly, the Civil Revision Petition is dismissed at the admission stage. There shall be no order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

June 14, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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