

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL Nos.1070,1072 AND 1076 OF 2017

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard learned Government Pleader for Revenue and Mr. Mangena See Rama Rao for unofficial respondents.

The appeals are directed against the common order dated 2nd day of June, 2017. The respondents in the writ petitions are the appellants. The writ petitions were filed for the following reliefs:

W.P.No.954 of 2005 is filed questioning the proceedings LC.C.No.1517; 1518/KVR/75 dated 22.01.2005 addressed to 3rd and 4th respondents to take possession of land admeasuring Acs.262-83 Cents from tenants for assigning the land to 3rd parties, as illegal and contrary to the orders of Land Reforms Appellate Tribunal, as confirmed by the Apex Court in Civil Appeal Nos.1252 and 1253 of 1986;

W.P.No.55 of 2005 is filed for declaring the action of the respondents in not allowing the petitioners from clearing the age old mango and cashew nut trees in an extent of Acs.40-00 in Survey No.246/2 in Bhimole Village and Acs.8-79 cents in Survey No.379/1 of Kovvurpadu Village, as illegal, unconstitutional and contrary to the orders of Apex Court in Civil Appeal Nos.1252 and 1253 of 1986 and

W.P.No.19851 of 2005 is filed for declaring notices issued to petitioners in LC.C No.1517, 1518/KVR/75 dated 31.08.2005 by Revenue Divisional Officer, Jangareddigudem for the purpose of taking possession from the petitioners, as illegal, unconstitutional

and contrary to the orders of the Apex Court in Civil Appeal Nos.1252 and 1253 of 1986.

The parties are referred to as arrayed in writ petitions.

The common order under appeal adverts to all the happenings and events in the declaration filed by M.Jagga Rao and M.Buchi Raju which were taken on file as LC.C. Nos.1517/KVR/75 and 1518/KVR/75 under Section 8(1) of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Act'). The circumstances preceding to issue all these proceedings are not in dispute. The orders passed by the Tribunal, confirmed by this Court and the Apex Court are also not in dispute. The short question that arises for consideration is after issue is considered and decided by the Tribunal, this Court and the Apex Court, thereby the findings attaining finality, whether the respondents are entitled in law or fact to reopen the issue including on the enjoyment of the petitioners and try to take possession from them.

M. Jagga Rao and M.Buchi Raju, the land owners of an extent of Acs.346-25 cents in different survey numbers of Bhimole Village, West Godavari District, State of Andhra Pradesh, filed declarations under Section 8(1) of the Act and taken on file LC.C. No.1517/KVR/75 and 1518/KVR/75. On 27.11.1975, the Land Reforms Tribunal (for short 'the LRT') held that the declarants are holding excess ceiling agricultural land of 7.2975 and 4.9179 standard holdings. The writ petitioners filed objections/claim petitions in I.A.Nos.87 and 88 of 1977 in LC.C. No. 1517/75 and 1518/75. On 24.11.1977, the objections/claim petitions filed by the writ petitioners were dismissed. The writ petitioners who claim rights of

tenancy challenging the order dated 24.11.1977 filed LRAC No. 111 of 1981 before the Land Reforms Appellate Tribunal (LRAT), West Godavari at Euru. On 31.05.1982, the appeals filed by the petitioners were allowed by LRAT. The status vis-à-vis enjoyment of petitioners of the subject matter of ceiling land was considered and held by LRAT that the petitioners are tenants and are in enjoyment of the subject matter of declaration. The respondents herein, aggrieved by the order dated 31.05.1982, filed civil revision petitions and the revisions were dismissed by this Court. The matter was carried in appeal to Apex Court in Civil Appeal Nos.1252 and 1253 of 1986 and SLP. Nos.14530 and 14535 of 1986. On 06.03.1990, the appeals were dismissed. For convenience and to appreciate the grievance of the petitioners namely, while the issue between same parties is concluded up to the Apex Court, reopening through communication dated 22.01.2005 is illegal and arbitrary.

The findings recorded through judgment dated 31.05.1982 in LRAC No.111 of 1981 read as follows:

“The next question is: Whether the lands in possession of the tenants can be excluded from holding of the declarants. The appellants rely on the decision reported in *AUTHORISED OFFICER Vs K.C.V.NARASAYYA* (1978 (I) APLJ 98). On the other hand, it is contended for the Government, that this decision is deemed to have been overruled by the Supreme Court in the decision reported in AIR 1982 (I) SC 913. No doubt the decision reported in 1978 (I) APLJ 98 is not specifically referred to and over-ruled by the Supreme Court, however the Supreme Court has clearly laid down that there cannot be any objection for including the lands in the holdings of both the tenant and the land-lord. Even though, the Supreme Court decision is not directly concerned with the possession of the lessees till, the decision given by that

Court with regard to the interpretation of the holding and the explanation there under is binding. In view of the decision of the Supreme Court, the decision reported in 1978 (I) APLJ 98 cannot be followed. In view of the Supreme Court decision reported in AIR 1982 (I) S.C.913, I hold that the lands in possession of the tenants cannot be excluded from the holdings of the declarants. It has to be included in the holdings of both the tenants and the land lords.

It is next contended for the appellants that even if the declarants surrender the lands in possession of the tenants, the Government cannot refuse to accept that surrender, however, it cannot disturb the possession of the tenants, whose rights are secured under the Tenancy Act. For this, he relies on clause (5) of Sec.10 of the Ceiling Act which is as follows:

5(a) Notwithstanding anything in this section, it shall be open to the Tribunal to refuse to accept the surrender of any land

i) Which has been converted into non-agricultural land and has been rendered incapable of being surrendered for the purpose of agriculture.

ii) The surrender of which is not acceptable on account of a dispute as to the title to the land or an encumbrance on the land or an account of the land being in the possession of any person mentioned in item (ii) or item (v) of clause (i) of Section (3) or on account of the land proposed to be surrendered becoming unacceptable by reason of its severance from the remaining part; of the holding and the Tribunal shall in every such case, serve a notice on the person concerned requiring him to surrender any other land in lieu thereof and thereupon the provisions of sub-sections (3) and (4) shall MUTATIS MUTANDIS apply to such surrender.

Provided that where land proposed to be surrendered under this Section is burdened with a mortgage, the Tribunal may on an Application made by the mortgagor with the consent of the mortgagee by order, transfer such mortgage from the land so proposed to be surrendered to the residuary holding of the mortgagor or to any part thereof;

Under the above clause, the Government is given discretion either to accept or not to accept surrender of certain types of lands but there is no prohibition for the surrender of lands in the possession of tenants. There is no power given to the Government to refuse to accept the lands in the possession of tenants. Thus, the above provision makes it clear that the Government cannot refuse to accept the surrender of lands in the possession of a tenant. Further the land in possession of any person as tenant is validly included in his holdings. Thus the possession of tenant is valid. Therefore, the tenants cannot be disturbed from the actual possession of the lands, even if it is surrendered by the declarant.

31. On a consideration of the above evidence, I hold that the tenancies pleaded by the appellants are true in both the appeals and the appellants alone have been in possession and enjoyment of the respective lands as tenants on the notified date and also subsequently. Taking possession of the lands and the delivery of possession of the lands to various allottees is not true. The orders of the Land Reforms Tribunal and the surrender proceedings are not valid against the appellants as those orders were passed without considering their claims.

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In the result, LRAC No.111/81 and 112/82 are allowed. The appellants are declared as tenants of the respective lands claimed by them and their possession cannot be disturbed, even if the declarants surrender these lands. No costs”

The Apex Court in Civil Appeal Nos.1252 and 1253 of 1986 held as follows:

“ The Appellate Tribunal, after entertaining the appeal, followed the procedure prescribed under r.16 and both parties led their evidences. Since allottee-appellants belong to the weaker section of the society, the state government fought that battle for them and produced documents and examined witnesses including the authorities under the Act. The Appellate Tribunal after a thorough examination of the evidence and a detailed

discussion thereof, accepted the case of the tenant-respondents and rejected that of the Government and the allottee. It has in paragraph 12 of its judgment, indicated cogent reasons requiring the primary Tribunal to issue notice to the tenant which was not done. Reference also has been made to several documents including extracts from Adangals of the Fasli year 138 (equivalent to 1970 according to the advocates for both sides before us) showing the possession of the tenants, and the statement of the decelerates to the same effect. The Appellate Tribunal ha proceeded to consider the evidence of the witnesses at considerable length and has rejected the evidence of the Government authorities both on the question of possession and the steps regarding publication etc. under r.4. It is thus clear that the tenants have established their long and continuous possession until the drawing of the proceeding under S.145 Cr.P.C. and the entire drama of treating the lands as the surplus lands of the original land lords was a mere paper transaction. In the absence of actual steps which ought to have been taken under r.4 the tenant-respondents could not be assumed to have any constructive notice and admittedly there was no communication of the order of the primary Tribunal to them. It is significant to note that under s..20(3) the period of 30 days available for filing appeal runs not from the date of the order but from the date of communication of the order. In these circumstances, it is not possible to hold that the appeal of the tenant- respondents before the appellate tribunal was barred by the rule of limitation. So far no merits of their claim is concerned the findings recorded by the appellate tribunal on the basis of the evidence led by the parties conclude the case in their favour. In view of the limited scope of s.21, the High Court was right in not re-appraising the evidence and in accepting the findings as correct. The learned counsel for the appellants as well as the State Counsel contended before us that the appellants are poor and therefore have not been able to produce acceptable evidence in their favour, and having regard to their position in the society their claim should be accepted we are not in a position to agree, specially as

the State which is not in a helpless condition has fought out the case seriously on their behalf throughout.

When the cases were taken up for hearing before us, the learned counsel for the tenant-respondent raised a preliminary objection to the maintainability of the appeals on the ground that 5 of the respondents were dead and the application for substitution of their legal representatives was earlier rejected by this Court. The argument was that, in the facts and circumstances of the case, the appeals must be held to have abated in their entirety. We do not consider necessary to decide this question as the appeals in our view, fail on merits.

For the reasons mentioned above, these appeals are dismissed but without costs.”

It is, in this background, the writ petitioners contend that the communication dated 22.01.2005 is illegal and without jurisdiction.

Notwithstanding the finality attached to the order of the Land Reforms Appellate Tribunal in LRAC.No.111 of 1981 dated 31.05.1982, the appellants issued proceedings dated 22.01.2005. The operative portion of the proceedings read thus:

The Additional Revenue Divisional Officer, Land Reforms, Eluru has suggested in his L.C.C.No.1517/1518/KVR/75 dated 6.3.97, the Authorised Officer, Land Reforms, Eluru may be directed to apply for sanction to prosecute tenants who failed to file declarations.

As the matter stands thus Sri Kakulapati Abbulu and others filed a WP.No.27078/03 before the High Court of A.P., Hyderabad regarding the land ceiling lands of Bhimole (V) of Gopalapuram (M).

The Mandal Revenue Officer, Gopalapuram has been impleaded as respondent in this W.P. The Mandal Revenue Officer, Gopalapuram has submitted parawise remarks on the petitioners affidavit to the Government Pleader for land ceiling. High Court of A.P. Hyderabad in his Lr.No.660/92 (Supt) dated 26.11.2004 for preparation of draft counter affidavit.

The WP is still pending before the High Court of A.P.

There is no objection to take possession of land from 21 benami tenants as reported by the Revenue Divisional Officer, Kovvur.

I, therefore, request you to take action for taking possession of the land Ac.262.83 from 21 benami tenants without dispossessing the original tenants whose names were confirmed by the Hon'ble High Court and assigned the land to the eligible beneficiaries and report compliance.

I also request you to give preference to the present encroachers who have gone to the Hon'ble High Court for assignment of their enjoyments otherwise eligible".

Hence, the writ appeals.

In the intra Court appeal, there is no dispute on any of the proceedings or orders of the Land Reforms Tribunal, adjudication by Appellate Tribunal, confirmation by this Court and the Apex Court etc., this Court is of the view that *de hors* the adjudication and finality attached to the orders stated above, reopening the issues which have been concluded between the parties, ought not to be allowed to be re-opened or re-agitated. The learned Single Judge in this background has recorded that the Apex Court in *G.BRAHMAYYA AND OTHERS V. ALA VENKATRAO AND OTHERS*¹ held that the tenants/writ petitioners are in possession of lands from at least 1970 and that the declarants have admitted the possession of tenants of agricultural land covered by ceiling declarations 1517/KVR/75 and 1518/KVR/75. The order of the Appellate Tribunal in I.A.No of 1992 in LC.C.No.1518 and 1517/KVR/75 dated 24.11.1992 has also become final. It is in this background while rejecting the plea of benami transactions, the learned Single Judge held as follows:

¹ (1990) 2 SCC 283

“Admittedly, no such contention that there were benami tenants was advanced at any point of time before the matter was decided finally by the Supreme Court. It is therefore not open to the respondents to take such a plea and it is clearly barred by principle of constructive *res judicata*.

Also neither the report of the Revenue Divisional Officer, Kovvur nor any other material has been placed before this Court by respondents in support of the said plea. So this plea of the respondents has no basis”.

Finally, it is held in the order under appeal that the District Collector does not have jurisdiction under the Act to direct the 3rd respondent to dispossess the writ petitioners, who were found to be in actual possession of the ceiling surplus land and that the proceedings impugned in the writ petition as without jurisdiction.

It is held that the writ petitioners assailed proceedings issued by an officer and the officer has been since impleaded, there is no infirmity in the array of parties and the writ petition without the State of A.P. as one of the respondents is maintainable. While adverting to the claims of assignees or the appellants *de hors* the findings recorded in favour of tenants, the impugned judgment records the following finding:

“Therefore, in my opinion they have no locus to file any objections. Also, once the Supreme Court has held that the petitioners and their legal representatives, who were respondents in G.Brahmayya (2 supra) were in physical possession of the land and declined to grant any relief to the assignees who were strongly supported by the State Government in the Supreme Court, they cannot re-agitate their claim for assignment of the land in occupation of the petitioners”.

We notice that through the proceedings impugned in the writ petition, the respondents/appellants herein tried to reopen the concluded issues between the parties up to the Apex Court, and/or find circumlocutory ways to dispossess tenants/writ petitioners, or deliver possession to assignees of ceiling surplus land. The procedure now adopted is unavailable, more particularly when the Revenue Divisional Officer in his capacity as Land Reforms Tribunal exercised its jurisdiction and passed orders under the Act, which were subject to judicial review both under the Act and also under Articles 226 and 136 of the Constitution of India. This Court at this juncture is compelled to record that the proceedings impugned in the writ petitions are nothing short of a misadventure by the executive to disturb the findings recorded by the competent Tribunal and a writ Court. This Court, in fact, desired to dismiss the appeals with exemplary costs, however, the learned Government Pleader prayed for not imposing costs and she would advise the appellants suitably.

We have independently considered each one of the orders up to the reported decision in *G. Brahmayya's case* (supra). The respondents failed to make out a ground for interference. Apart from our view, as already held, the learned single Judge very elaborately appreciated the legal effect of orders made at each one of the stages i.e., from the stage of declaration of ceiling surplus agricultural land, up to the order accepting possession of tenants/writ petitioners, allowed the writ petitions. We are in complete agreement with the findings recorded by the learned Single Judge in the orders under appeal.

The writ appeals fail and are, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date:29.08.2018
Sp/Lrk

