

(1979) 07 AP CK 0006

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3041 of 1977

Athipalli Malla Reddy

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 06-07-1979

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 3

Citation : AIR 1980 AP 73

Hon'ble Judges : C. Kondaiah, C.J; Seetharama Reddy, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, for the Appellant; Govt. Pleader, for the Respondent

Judgement

C. Kondalah, C.J.—This civil revision petition u/s 21 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, by the petitioner-land-holder, gives rise to a short question of law relating to the interpretation of the definition of "wet land" under of Section 3 (v) (ii) of the Act, which reads thus:-

"3. x x x x x x x x x (v) "Wet land" means land registered as wet, single crop wet, double crop wet, compounded double crop wet of special rate wet land in the land revenue accounts of the Government or assessed as such, and includes any land not registered as wet, which has been:

(I) included in the Ayacut of any Government source of irrigation;

(ii) irrigated by water from any Government source of irrigation in any four fasli years within a continuous period of six fasli years immediately before the specified date; or

(iii) Irrigated by a tube well constructed by the Government or any person;

Provided that any land which has been registered as wet land in the land revenue accounts of the Government and on which "no irrigated crop has been raised with the use of water from the Government source of irrigation in any four fasli

years within a continuous period of six fasli years immediately before the specified date for want of supply of water from such source, shall not be deemed to be a wet land."

Any land registered as wet, be it single crop wet, double crop wet, compounded double crop wet, or special rate wet land, in the land revenue accounts of the Government is assessed as such, is undoubtedly wet land. The second category of "wet land" takes in any land not registered as wet, referred to above, but included in the ayacut of any Government source of irrigation irrigated by water from the Government source of irrigation in any four fasli years within a continuous period of six fasli years immediately before the specified date, or irrigated by tube well constructed by the Government source of irrigation in any four fasli years within a continuous period of six fasli years immediately before the specified date, or irrigated by tube well constructed by the Government or any person. The proviso makes it clear that any land though registered as wet, but not irrigated crop has been raised therein with the use of water from the Government source of irrigation in any four fasli years within a continuous period of six fasli years immediately before the specified date for want of supply of water from such source, shall not be deemed to be wet land. The interpretation of the provisions of Section 3 (v) (I), and (ii) takes in lands, which are included in the ayacut of any Government source of irrigation. Mere inclusion of the land in the ayacut of any Government source of irrigation would not, ipso facto, make that land "wet land". The proviso comes into play where the wet land so registered must have received the supply of water from the Government source for four fasli years within a continuous period of six fasli years immediately before the specified date. If there is want of water supply from such Government source, that land, though included in the Ayacut must be deemed to be not "wet land". The essence of the definition "wet land" appears to be registration of any land as wet irrespective of the category mentioned in Section 3 (v). If the land is not registered as wet, but merely included in the Ayacut, it must have received supply of water from a Government source of irrigation in any four fasli years within a continuous period of six fasli years immediately before the specified date. If this condition relating to the actual supply of water for a continuous period of four fasli years within a continuous period of six fasli years is not satisfied, then it shall be deemed as dry land, notwithstanding the fact that it is included in the ayacut.

2. We shall now turn to the case of any land not registered as wet, but has been irrigated by water from any Government source of irrigation in any four years within a continuous period of six fasli years immediately before the specified date. Here the source of irrigation with which the dry land received supply of water must be, not by permission or stealthily or unauthorised use of water thereby enabling the land-holder to raise the wet crop. The proviso to this section must be construed in such a way so as to give a right to the land-holder for the Government source of irrigation in any four fasli years within a continuous period of six fasli years.

3. The submission of the Government Pleader, that the permissive or unauthorised use of water from any Government source of irrigation in any four fasli years within a continuous period of six fasli years, would bring the case within the definition of "wet land", if acceded to, would lead to much hardship and anomalous results. The user of Government water by a land-holder, either unauthorised, stealthily or with the permission of the concerned authorities, on account of drought or any special circumstances in any particular period, would not in any way create a right in him to take water from the Government source of irrigation as of right. The legislature would not have intended to include any dry land, which has stealthily or unauthorisedly been cultivated by the use of Government water within the meaning of "wet land". The expression "any land not registered as wet which has been irrigated by water from a Government source of irrigation" used in Section 3 (v) (ii) refers only to land registered as "dry" though it is being irrigated by the Government source of water. If the plea urged by the Government pleader is given effect to, it results in a case where the land-holder's land would be taken away on the basis that it was "wet land" though it was not registered in an ayacut. The Legislature would not have intended such an anomaly or injustice to prevail. In the light of the intendment and object of the Act; the view taken by our learned brother Ramachandra Rao, J. in *A. Sudhakara Reddy. v. State of A. P.* (1977) APLJ 127, to the effect, that the language of Section 3 (v) (ii) of the Act does not require that the source of irrigation of a land must be a Government source of irrigation and it should be as of right, does not appear to be correct. The proviso to this very definition, as pointed out earlier, requires actual use of water from a Government source of irrigation for a period of four fasli years within a continuous period of six fasli years even though it is included in the ayacut of any Government source of irrigation. The use of water from the Government source, noted in the proviso, as well as the irrigation by water from any Government source of irrigation, stated in Section 3 (v) (ii) must be as of right.

4. In *Kalidindi Lakshminarasaraju Vs. State of Andhra Pradesh*, Division Bench of this Court, consisting of Ramchandra Raju and Madhavarao, JJ. while considering the true effect and the intention of the Legislature in enacting the definition "dry land" and "wet land" have observed at page 358 thus:-

"In order to give effect to the true intention of the Legislature in enacting those provisions, the two definitions must be read together to find out a harmonious interpretation of the "definitions." If they are read together it will become immediately clear that a land registered as dry land in the land revenue accounts of the Government also has to be treated as wet land if that dry land is included in the ayacut of any Government source of irrigation enabling it to raise wet crops."

5. Unless the landholder, as in his own right, uses the water from the Government source, it cannot be said that he will acquire any right by mere permissive use or stealthily or unauthorised use of the water from any

Government source be it for four years or more than four years. Sub-sections (I), (ii) and (iii) of S. 3 (v) must be read together harmoniously. The submission of the Government Pleader that Section 3 (v) (ii) specifies an independent category of land not registered as wet, but has been included in any ayacut of Government source of irrigation does not appear to be correct. Without the land being registered as wet, and without the use of water from a Government source, one will not get any right to use Government water. The proviso requires that even a land registered as "wet" in the revenue accounts, must receive water for four fasli years. Otherwise although the, (land) is registered as "wet", it shall not be deemed as "wet land". This proviso makes it abundantly clear that mere registering a land as "wet" alone will not do. It shall be excluded from the definition "wet" if no water is supplied for four fasli years within a continuous period of six fasli year. The actual use of water from the Government source also is a condition precedent to hold a particular land as "wet land".

6. Applying the above principles to the case on hand we shall examine as to whether the land in the case is "wet land" as contended by the Government Pleader or "dry land" as urged by the land-holder. The petitioner-landholder has used the Government source of irrigation for four fasli years unauthorisedly in cultivating wet crops in his land. Such unauthorised use of Government source of irrigation even if it is for four fasli yeas or more, could not give the petitioner any right to claim water from the Government source or irrigation and hence this land cannot be treated as "wet" for the purpose of classification within the meaning of Section 3 (v) (ii) of the Act. We therefore, hold that this land. admeasuring an extent of Ac. 11-12 1/2 cents, covered by Survey Nos. 170/1, 184/A, 176 and 183/C of Penuballi village, which is duly registered as dry cannot be treated as delta or wet land. We therefore set aside the finding of the Tribunal and direct it to recompute the total holding of the petitioner-declarant in the light of the above findings.

7. The revision petition is allowed with costs, Advocate's fee Rs. 150/-.

8. Revision allowed.