

(1985) 07 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1375 of 1976

A.T.K. Venkata Thathacharulu

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 19-07-1985

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 18, 20, 20(1), 67, 67(1)

Citation : AIR 1986 AP 23

Hon'ble Judges : P. Chennakesav Reddy, Acting C.J.;Sriramulu, J;Ramanujulu Naidu, J

Bench : Full Bench

Advocate : N.V.V. Ramanujachary, for the Appellant; Govt. Pleader for Revenue, for the Respondent

Judgement

Ramanajulu Naidu, J.—On a reference made by Jayachandra Reddy, J., observing that there is a conflict of judicial opinion rendered by two Division Benches of this Court in *Rajah of Venkatagiri v. The State* AIR 1958 Andh Pra 522 and *G. Papireddi v. State of A.P* 1973 2 APLJ 138, while hearing the above Writ Petition the following question is referred to a Full Bench of this Court for resolving the conflict :

"Whether the principle that when a quasi-judicial power vested in an authority is delegated to its subordinate authority the delegating authority cannot entertain an appeal or revision against the order or act of its delegate, is applicable to a case of delegation of statutory administrative power?"

We are thus seized of the reference.

2. The material facts giving rise to filing of Writ Petition lie in a narrow compass and may be briefly stated : Late Raja K.J.V. Naidu, former zamindar of Kangundi estate granted pattas long prior to 1-7-1945 to the petitioner in respect of some tamarind trees situate in three villages comprised in the estate. Ever since the

grant, the petitioner has been enjoying the usufruct of the tamarind trees by paying tree-tax fixed by the late Zamindar. The estate of Kangundi was notified and taken over by the Government on 7-9-1950. When some attempts were made to secure assignment of the lands on which the trees are situate to the landless poor of the villages, the petitioner made a representation to the 4th respondent, the Tahsildar of Kuppam praying for assignment of the lands in his favour. The representation not having evoked any response, the petitioner preferred an appeal before the 3rd respondent, the District Revenue Officer, Chittoor on 1-9-1970 seeking enforcement of the rights created in his favour by the Zamindar under S. 20 of Act 26 of 1948. The 3rd respondent by his proceedings dt. 21-1-1974 while recognising the pattas granted in favour of the petitioner in respect of the tamarind trees, however observed that the lands covered by the tamarind trees might assigned to the petitioner under B. S. D. 16 if the petitioner was found eligible under the rules governing the same. Apprehending that the order of the 3rd respondent might prejudicially affect his interests the petitioner preferred a revision petition before the 2nd respondent, the Board of Revenue, Andhra Pradesh praying for an unconditional assignment of the lands in his favour. The 2nd respondent by his proceedings dt. 17-1-1974 rejected his revision petition. The petitioner thereupon preferred a revision petition before the 1st respondent, the State of Andhra Pradesh, represented by its Secretary, Revenue Department, Government of Andhra Pradesh, Hyderabad. The Revision Petition was not entertained by the 1st respondent and it was summarily rejected by its order dt. 22-2-1976 for want of jurisdiction. The Writ Petition was therefore filed seeking quashing of the said order.

3. Before advertng to the question referred to us, the relevant provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1948 may be noticed.

4. Section 11 of the Act provides for grant of ryotwari pattas and it enacts that every ryot in an estate shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of

(a) all ryoti lands which, immediately before the notified date were properly included or ought to have been properly included in his holding and which are not either lanka lands or lands in respect of which a landholder or some other person is entitled to a ryotwari patta under any other provision of this Act; and

(b) all lanka lands in his occupation immediately before the notified date, such lands having been in his occupation or in that of his predecessors in title continuously from the 1st date of July, 1939.

4A. There is a proviso appended to S. 11 of the Act and it lays down that no person who has been admitted into possession of any land by a landholder on or after the first day of July, 1945 shall, except, where the Government, after an examination of all the circumstances otherwise direct, be entitled to a ryotwari patta in respect of such land.

5. Section 18 of the Act provides for vesting of buildings situate in estates. Section 18(b) of the Act enacts that if an question arises whether any building or land falls or does not fall within the scope of sub-sec. (1), (2), (3), (4) or (5), it shall be referred to the Government whose decision shall be final, and not be liable to be questioned in any Court of Law.

6. Section 20(1) of the Act among other things, saves rights created by landholder in any land. The third proviso thereof confers power upon the Government to terminate any right in land created for a period exceeding one year.

7. Section 67(1) of the Act confers upon the Government to make rules to carry out the purposes of the Act. Under S. 7(2)(C) such rules may provide for delegation of the power conferred by the Act on the Government or any other authority, officer or person. In exercise of the powers conferred by S. 67(1) and (2)(c) of the Act, a rule was framed in G.D.Ms. No. 2043 dt. 5-8-1949 and published in the Fort St. George Gazette, dt. 16th Aug. 1949. The rule runs thus :

"The power specified in column (2) of the Schedule below which are conferred on the Government by the Sections of Act specified in the corresponding entry in column (1) of the said Schedule may be exercised also by any of the authorities or officers specified in the corresponding entry in column (3) thereof subject to such control as may be specified in the said column (3) and also subject to revision by the Government."

In the Schedule the powers conferred on the Government under the proviso to S. 11 were delegated to the Collector of the district in which the land is situated, where the extent involved does not exceed 2 1/2 acres of wet or garden land or 5 acres of dry land and the Board of Revenue in other cases, while the powers conferred on the Government under S. 18(6) and the third proviso of S. 20(1) of the Act were delegated to the Board of Revenue. It may be noted that the rule expressly reserves a right of revision by the Government over exercise of the power delegated to the authorities.

8. In *Rajah of Venkatagiri v. The State* AIR 1958 Andh Pra 522 (supra) one B. Nageswararao a lessee of several state quarries in ten villages comprised in the erstwhile estate of he Rajah of Venkatagiri, abolished under Act XXVI of 1948, filed a Writ Petition on the file of the High Court of Madras for the issue of a writ of mandamus directing the State of Madras to forbear from terminating his leasehold right in the slate quarries and from interfering with his possession and working of the slate quarries. The petition came up for hearing before Umamaheswaram, J., of the erstwhile High Court of Andhra. In the counter-affidavit filed, the Government for the first time alleged that the leases in favour of Nageswararao were not real or bona fide transactions. As the said allegation was made by the Government for the first time in the counter-affidavit, Umamaheswaram, J., directed the Government to hold an enquiry into the truth of the leases and pass final orders within three months from the date of his order

dt. 18-7-1955. Thereafter, the Govt. Instructed the Board of Revenue to hold an enquiry and submit a report within the prescribed time. The Board in its turn instructed the Director of Settlements to make the enquiry. After completion of the enquiry the Director of Settlements submitted a report to the Board of Revenue. The Board of Revenue, after calling for the records from the Collector and the Estate manager and the records of the enquiry conducted by the Director of Settlements, submitted a report to the Government on 20-10-1955. On receipt of the report the Government however instructed the Board of Revenue to dispose of the case on its merits in view of the delegation of powers conferred on the Board under the second proviso to S. 20(1) of the Act. Thereafter, the Board of Revenue passed an order dt. 27-12-1955 holding that the leases to the petitioner were granted only subsequent to 1st July, 1945 and that, as the leases were for a period exceeding one year, the same were not enforceable against the Government as enacted in the second proviso to S. 20(1) of the Act. On that finding, the Board declined to ratify the leases and terminated the same under the powers delegated to it under the second proviso to S. 20(1) of the Act. The Collector Nellore district to take possession of the quarries from Nageswararao. Three Writ Petitions were filed - firstly for the issue of a writ of mandamus directing the Andhra State to forbear from terminating the leasehold right of Nageswararao in the slate quarries, secondly for the issue of a writ of certiorari to quash the order of the Board of Revenue and thirdly for the issue of a writ of mandamus directing the State of Andhra Pradesh to issue a fresh lease in accordance with R. 47 of the Mineral Concession Rules, 1949.

9. When the three Writ Petitions came up for hearing before a Division Bench of the High Court of Andhra Pradesh consisting of K. Subba Rao, C.J., and Basi Reddy, J., it was urged before them that the enquiry under S. 20(1) of the Act was judicial or quasi-judicial in nature, that the Board of Revenue should have made the enquiry itself, that it had no jurisdiction to delegate its function to a subordinate officer i.e., the Director of Settlements, and that the enquiry even if held in pursuance of the directions given by Umamaheswaram, J., should have been conducted only by the Board of Revenue and not by its subordinate officer. Speaking on behalf of the Bench K. Subba Rao, C.J. quoted the well settled proposition of law, "that if a statute confers a judicial power on a tribunal it cannot delegate it to another body", reiterated by the Supreme Court in *Roopchand v. State of Punjab*. AIR 1963 SC 1603. Adverting to the nature and scope of enquiry envisaged by S. 20 of the Act he observed :

"the main section says that all rights in any land created by a landholder are valid. The second proviso to that section states that any such right created after 1st July 1945 shall not be enforceable against the Govt. The section does not provide a judicial or quasi-judicial machinery for making an enquiry to ascertain whether a particular right is created by a landholder before 1st July 1945 or subsequent to 1st July 1945. The proviso only declares that certain legal consequences flow on the basis of certain facts and presumably the Government will have to tentatively decide those facts to exercise the rights conferred on

them under the said section. If those facts do not exist or are wrongly decided by the Government to exist the party affected could certainly question the action of the Government in a Civil Court. The Government obviously could not decide the jurisdictional facts wrongly and purport to deprive the landholder of the rights under the section. The Government for the purpose of implementing the provisions of the Act, by their order dt. 22-5-1951, empowered the Revenue Board to decide whether the rights of the landholder falling under the second proviso should be terminated or allowed to continue. This is nothing more than an administrative enquiry held for the purpose of implementing the provisions of S. 20 of the Act. If so it follows that the Government or the Revenue Board would certainly be acting within their rights, if they gathered material for ascertaining the necessary facts either directly or through their subordinates. The Govt., authorised the Revenue Board to make an enquiry and the Revenue Board made the order on the basis of the material supplied to it by the Director of Settlements and also on other material. In the absence of a statutory requirement of a judicial or quasi-judicial enquiry, we must hold that the order of the Revenue Board was administrative in nature and the fact that the Director of Settlement made an enquiry would not make it any the less an administrative enquiry."

XXX XXX XXX XXX XXX XXX XXX XXX XXX

The mode of enquiry was prescribed by G.O. Ms. No. 1250 Revenue dt. 22-5-1951 whereunder the Govt., authorised the Revenue Board to decide the dispute under the second proviso to S. 20(1) of the Act and reserved to itself the power to revise the order of the Revenue Board. It may be presumed therefore that the learned Judge as well as the learned advocates appearing for the parties were aware of the said G.O. at the time when Umamaheswaram, J., made his order.

It is therefore reasonable to assume that when Umamaheswaram, J., directed the Government to make an enquiry under S. 20 the learned Judge meant that the enquiry should be in the manner prescribed by the said Government order. Under the Government's order, the enquiry should be made by the board of Revenue and the order of the Board of Revenue would be subject to revision by the Government. The petitioner, instead of filing a revision against the order of the Revenue Board, filed a writ petition and thus prevented the Government from making a final order. It is still open to the petitioner if he so advised to move the Government to revise the order of the Revenue Board."

10-11. It may be noted that the mode of enquiry to decide the dispute under the second proviso to S. 20(1) of the Act was prescribed by G.O.Ms. No. 1250 Revenue dt. 22-5-1951 whereunder the Government authorised the Revenue Board to decide the dispute, while the mode of enquiry to decide the dispute under third proviso to S. 20(1) of the Act was prescribed by G.O.Ms. No. 2043 Revenue dt. 5-8-1949 whereunder the Govt. Also authorised the Revenue Board to decide the dispute. Both the G.Os. were issued in exercise of the powers

conferred by S. 67(1) and (2)(c) of the Act XXVI of 1948 and under both the G.Os. the Govt., reserved to itself the power to revise the orders of the Revenue Board. What is true of the nature of enquiry into the dispute by the Government contemplated by the second proviso to S. 20(1) of the Act is equally true of the nature of enquiry into the dispute by the Government contemplated by the third proviso to S. 20(1) of the Act. It therefore follows that the enquiry held by the Board of Revenue in the instant case by virtue of the power of delegation conferred upon it by the Government as provided by the third proviso to S. 20(1) of the Act is nothing more than an administrative enquiry.

12. In *G. Papireddi v. State of A.P.* (1973) 2 APLJ 138 (supra) adverting to the scope of enquiry into the dispute contemplated by the proviso to S. 11 of the Act and conducted by the Board of Revenue in pursuance of delegation of the power conferred upon it by the Government under G.O.Ms.No. 2043 dt. 5-8-1949, similar to the equity held by the Board of Revenue in the instant case, a Division Bench of this Court consisting of Gopal Rao Ekbote, C.J., and Madhava Rao, J., observed:

"What follows therefore is that when the statute wants a particular wide discretionary power to be exercised by the Government, and if the Government in pursuance of an authority delegates that power to the Board of Revenue, the Government cannot sit in appeal or revision over the decision of the Board of Revenue is really the order of the Government under the proviso to S. 11. We have therefore no smallest hesitation in holding that even in a case of delegation of statutory administrative power, the Government cannot constitute itself as an appellate or revisional authority to hear an appeal or revision against the order of its delegate. The decisions of the Supreme Court and of this High Court referred to above which dealt with the delegation of quasi-judicial power would equally apply to cases, as here, relating to the delegation of the statutory executive powers."

13. To the same effect were the decisions in *Munilaxmamma v. The State of A.P.* 1970 1 APLJ 147 and *Rukmini Devi v. Settlement Officer*, 1970 1 APLJ 297 both rendered by Gopal Rao Ekbote, J., as he then was, while construing the scope of enquiry contemplated by the proviso to S. 11 of the Act in the first case and the scope of enquiry conducted by the delegatee in pursuance of S. 18 of the Act. In fact both the decisions were approved by the Division Bench in *G. Papireddi v. State of A.P.* (supra). In reaching the conclusion the Division Bench also fortified itself by referring to and relying upon the decision of the Full Bench of the Madras High Court in *A.S. Nagappa Chettiar and Another Vs. Annapoorani Achi alias Karuppayi Achi and Another*, . We must however observe that in the said case the then provincial Government in purported exercise of the powers conferred upon it to make rules under the Madras Agriculturists Relief Act 4 of 1938 made a rule providing for a right of appeal from the orders passed under the Act while the Act itself did not directly provide for an appeal against an order passed in exercise of the jurisdiction conferred by the Act. The question referred

to the Full Bench for its opinion was :

"When a statutory rule giving a right of appeal is promulgated after a final order has been passed, will an appeal lie under that rule against that order?"

The question was rightly answered in the negative. The decision of the Full Bench has absolutely no bearing on the question debated before us.

14. We must also point out that the decision rendered by the Division Bench in *Rajah of Venkatagiri v. State* AIR 1958 Andh Pra 522 (supra) was not brought to the notice of the other Division Bench that decided *G. Papireddi v. State of A.P.*, (1983) 2 APLJ 138 (supra).

15. In *Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary*, the facts were : One Govind Hari was a monthly tenant of room No. 23 of chawl at Chandanwadi. On his death in 1961 the tenancy devolved on his widow Anusuyabai, who took in a boarder. The chawl belonged to the Municipal Corporation of Bombay and proceedings were taken to eject Anusuyabai and the boarder under Chapter VI-A of the Bombay Municipal Corporation Act. The proceedings were initiated by one of the officers to whom the powers of the Commissioner were delegated by him under S. 68 of the Bombay Municipal Corporation Act (3 of 1888) as amended by Maharashtra Act (14 of 1961). After due enquiry the officer passed an order evicting those persons. An appeal was filed under S. 105F of the Act before the Bombay City Civil Court. It was held that the delegation was not proper inasmuch as the judicial functions of the Commissioner under Ss. 105B to 105E had been delegated to be exercised under the Commissioner's control and subject to this revision. The learned Judge pointed out that judicial or quasi-judicial power could not ordinarily be delegated and that in any event, it could not be delegated when control over the decision was kept by the Commissioner. The order of eviction of the Supreme Court their Lordships held :

"....It goes without saying that judicial power cannot ordinarily be delegated unless the law expressly or by clear implication permits it. In the present case the amendment of S. 68 by inclusion of delegation of the functions of the Commissioner under Ss. 105B to 105E does indicate the intention that the judicial or quasi-judicial powers contained in Chapter VIA were expressly intended to be delegated. To the delegation as such there can be no objection. What is objected to is the provision, both in the section as well as the order of delegation, that the exercise of the function is to be under "the Commissioner's control" and "subject to his revision". These words are really appropriate to a delegation of administrative functions where the control may be deeper than in judicial matters. In respect of judicial or quasi-judicial functions these words cannot of course bear the meaning which they bear in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision it did not mean that he reserved to himself the right to intervene to impose his own decision upon his delegate.

What those words means was that the Commissioner could control the exercise administratively as to the kinds of cases in which the delegate could take action or the period or time during which the power might be exercised and so on and so forth. In other words, the administrative side of the delegate's duties was to be the subject of control and revision but not the essential power to decide whether to take action or not in a particular case. This is also the intention of S. 68 as interpreted in the context of the several delegated powers. This is apparent from the fact that the order of the delegate amounts to an order by the Commissioner and is appealable as such. If it were not so the appeal to the Bombay City Civil Court would be incompetent and the order could not be assailed. The order of the delegate was the order of the Commissioner and the control envisaged both in S. 68 and the order of delegation was not control over the decision as such but over the administrative aspects of cases and their disposal. No allegation has been made that the Commissioner intervened in the decision of the case or improperly influenced it. In these circumstances, the order impugned in the appeal cannot be sustained."

16. In *Godawari S. Parulekar and Others Vs. State of Maharashtra*, the question that arose for consideration was whether the State Government of Maharashtra having delegated its powers conferred upon it under R. 30 of the Defence of India Rules, 1962 by a notification dt. 9-11-1962 to all the Dist. Magistrates within the limits of their jurisdiction subject to the conditions mentioned in the notification, was competent to pass an order of detention under R. 30. Their Lordships of the Supreme Court held that by issuing the notification the State Government had not denuded itself of the power to act under Rule 30. In reaching the conclusion their Lordships quoted with approval the following observations of Wills, J., in *Huth v. Clarke* (1890) 25 QBD 391 at p. 395.

"Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise the person would have to do himself."

17. From the aforesaid discussion the following principles of law emerge :

1. The enquiry contemplated by the second and third provisos of S. 20(1) of the Act is purely administrative in character.
2. The power to conduct the enquiry contemplated under the second and third provisos to S. 20(1) of the Act was delegated to the Board of Revenue by G.O.Ms.Nos. 1250 and 2043, Revenue dt. 22-5-1951 and 5-8-1949 respectively in exercise of the powers conferred upon the Government by S. 67(1) and (2)(c) of the Act.
3. While delegating the power to the Board of Revenue under both the G.Os. the Govt., expressly reserved to itself the power to revise the orders of the Board of Revenue passed in that behalf and did not denude itself of the power. Delegation of statutory administrative power by the Government to its subordinate authority reserving to itself the power to entertain an appeal or revision against the act or

order of its delegate is perfectly valid:

18. The question referred to our opinion has to be therefore answered in the negative and is accordingly answered. It necessarily follows that the decisions rendered in *G. Papireddi v. State of A.P* 1973 2 APLJ 138 (supra), *Munilaxmamma v. State of A.P.*, 1970 1 APLJ 147 (supra) and *Rukmini Devi v. Settlement Officer*, (1970) 1 APLJ 297 (supra) are no good law and are overruled. The decision in *Rajah of Venkatagiri v. State* AIR 1958 Andh Pra 522 (supra) is affirmed and approved.

19. In the result the impugned order is quashed and the 1st respondent is directed to dispose of the revision petition preferred by the petitioner on merits in accordance with law there being no other question raised in the writ petition. The Writ Petition is thus allowed. In all the circumstances of the case we however make no order as to costs. Advocate's fee Rs. 250/-.

20. Petition allowed.