
(2001) 02 AP CK 0098
In the Andhra Pradesh High Court
Case No : CRP No. 3326 of 1997

Authorised Officer, Land Reforms, Kakinada

APPELLANT

Vs

Marella Kondala Rao and others

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 10(2), 12, 9
Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 38
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 21, 8, 8
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 16(7)

Citation : (2001) 3 ALD 39 : (2001) 3 ALT 31

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Government Pleader for L.A, for the Appellant; Mr. G. Krishna Murthy and Mr. E. Phani Kumar Advs., for the Respondent

Judgement

1. The Authorised Officer, Land Reforms, Kakinada, filed this revision u/s 21 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, thereafter referred to as "the Act") against the order dated 21-1-1993 passed by the Land Reforms Appellate Tribunal, Kakinada, (for brevity "the appellate Tribunal") in LRA No. 140 of 1990.

2. The brief facts of the case, necessary for the disposal of this civil revision petition, are as follows: One Merla (Bolla) Jogayyamina (for shot "the declarant") filed a declaration u/s 8 of the Act When the declarant proposed to surrender an extent of Ac.6.98 cents in S. No.201 of Surampalem village of Peddapuram taluk, respondents 1 to 4 herein filed objection petitions under Rule 16 (7) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974, (hereafter referred to as "the Rules") before the Land Reforms Tribunal claiming to be the cultivating tenants of the declarant. Respondents 1 to 4 examined five witnesses, CW 1 to CW 5 and marked Exs.X1 to X6 to show that they are the

cultivating tenants of the land in question. The Land Reforms Tribunal, ultimately came to the conclusion that respondents 1 to 4 are the tenants of the declarant and that the land in their possession has to be included in the holding of the declarant as well as the tenants as per the judgment of the Supreme Court in State of Andhra Pradesh Vs. Mohd. Ashrafuddin, and that the lands in S.No.201 of Surampalem village, being unencumbered cannot be rejected u/s 10(5) of the Act for the purpose of surrender of excess land. However, the Land Reforms Tribunal recorded a categorical finding that respondents 1 to 4 are the cultivating tenants of the land to an extent of Ac.7.00 in S.No.201 of Surampalem village. Aggrieved by the order of the Land Reforms Tribunal, the Authorised Officer, Land Reforms, Kakinada, filed appeal insofar as the order of the Tribunal recognising the respondents 1 to 4 as cultivating tenants of declarant. The appellate Tribunal, by the impugned order, rejected the appeal and hence this revision.

3. The order of the appellate Tribunal is challenged as being contrary to the provisions of the Act and the Rules.

4. The Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (hereafter referred to as "the Andhra Tenancy Act") regulates the relations of landlord and cultivating tenants of agricultural lands in Andhra area of the State of Andhra Pradesh. After the Amendment Act No.39 of 1974, every lease subsisting at the commencement of the Act No.39 of 1974 shall be deemed to be in perpetuity. The cultivating tenants thereafter can only be evicted in accordance with Section 13 of the Andhra Tenancy Act. Further, notwithstanding the fact that the tenancy is in perpetuity, the landlord shall be entitled to resume possession of the lands for personal cultivation, provided the lands held by the landlord under his personal cultivation, after resumption of land u/s 12 of the Andhra Tenancy Act, does not exceed 2/3rd of the ceiling area as defined u/s 3 (c) of the Act. The conspectus of Sections 10, 12 and 13 of the Andhra Tenancy Act shows that though the agricultural tenancy is recognised to be one in perpetuity, still under certain stated conditions the landlord can terminate the tenancy and resume the lands. If the landlord resumes the lands for his personal cultivation, the fact that the landlord holds lands in excess of ceiling area is the relevant point for consideration. However, under no circumstances a cultivating tenant is conferred ownership rights under the Andhra Tenancy Act. The disputes between the landlord and the cultivating tenants of the lands under the Andhra Tenancy Act are to be adjudicated by a Special Officer under the provisions of the Andhra Tenancy Act who is also competent to decide the dispute in relation to Section 10 of the Andhra Tenancy Act. By necessary implication, the jurisdiction of a civil Court or any statutory authority under any enactment is excluded and finality is attached to the decision of the appellate Tribunal u/s 16(2) of the Andhra Tenancy Act.

5. The law relating to agricultural tenancy in Telangana area of the State of Andhra Pradesh is drastic. The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereafter referred to as "the Telangana Tenancy

Act") regulates the relations between the landlords and the tenants of agricultural lands in Telangana area. As per Section 38-E of the Telangana Tenancy Act, the ownership of the lands held by the protected tenants shall stand transferred to and vest in the protected tenants with effect from 1-1-1973 and from such date the protected tenants shall be deemed to be the full owners of such lands. Section 38-E(2) of the Telangana Tenancy Act empowers the tenancy Tribunal to issue ownership certificate to every such protected tenant which shall be conclusive evidence of the protected tenant having become the owner of the land. Therefore, a protected tenant in relation to agricultural land in Telangana area with effect from 1-1-1973, subject to grant of ownership certificate, becomes absolute owner, whereas under the Andhra Tenancy Act, subject to provisions of Sections 12 and 13 of the Andhra Tenancy Act, the tenant enjoys the lease in perpetuity.

6. The Andhra Tenancy Act as well as the Telangana Tenancy Act were in existence as on 1-1-1975 when Land Reforms came into force. As to how the Act deals with the tenancy lands in Andhra Area as well as in Telangana Area is interesting to note. It is apposite to excerpt Section 13 of the Act, which reads as under:

"13. Special provisions for protected tenant :--(1) Where the holding of any owner includes any land held by a protected tenant, the Tribunal shall in the first instance, determine whether such land or part thereof stands transferred to the protected tenant u/s 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950 (Act XXI of 1950), and if so, the extent of land so transferred; and such extent of land shall thereupon be excluded from the holding of such owner and included in the holding of such tenant, as if the tenant, was the owner of such land for the purpose of this Act.

(2) Subject to the provisions of subsection (1), the relevant provisions of the Act aforesaid shall apply in the matter of purchase of such land by such protected tenant."

7. A plain reading of Section 13 of the Act shows that Land Reforms Tribunal has to first determine the land in possession of the tenant and exclude the same from the holding of the owner as if the tenant has been owner of the land for the purpose of the Act, whether or not the protected tenant was given the ownership certificate under Section 38-E(2) of the Telangana Tenancy Act. This Court in *Gads Suresh v. Government of Andhra Pradesh* 1977 (1) APLJ 112, *P. Jagadishwaraiah v. State of Andhra Pradesh* 1978 (1) APLJ 161 and *Geeta Tirupath Reddy Vs. State of Andhra Pradesh*, held that while determining the holding of an ownership, the land in possession/holding of the protected tenant has to be necessarily excluded before determining the land held by the owner. Further Section 28 of the Act gives overriding effect over all other laws.

8. There is, however, no provision in Land Reforms Act to deal with agricultural tenancy in Andhra area. The Legislature, has specifically excluded such a subject

from the purview of the Land Reforms Tribunal in Andhra area. This only shows that the Tribunal, insofar as Telangana area is concerned, is empowered to determine the land in the holding of a tenant and as a necessary corollary it is empowered to declare a person to be a protected tenant whereas such a power does not vest in the Tribunal in Andhra area. Having regard to the provisions of Andhra Tenancy Act, the land holding of the landlord is only relevant while ordering resumption of the landlord for the purpose of personal cultivation u/s 12 of the Andhra Tenancy Act. In other words, the land in the holding of a tenant shall have to be treated for the purpose of Section 9 of the Land Reforms Act as the holding of the landlord as well as the tenant, and at the stage of surrendering the lands u/s 10(2) and 10(3) of the Act, it is for the Tribunal either to accept or surrender the land in possession of the tenants u/s 10(5) of the Act. It is not within the power or jurisdiction of the tenancy Tribunal in Andhra area to declare whether the tenants in petitions filed under Rule 16(7) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 are agricultural tenants for the purpose of Andhra Tenancy Act. However, to a limited extent, for the purpose of Section 10(5) of the Act, whether or not to accept the lands proposed to be surrendered by the declarant, it is competent for the Tribunal to record a finding to a limited extent which may be relevant in any enquiry under the Andhra Tenancy Act. In the case on hand, the Tribunal has rightly observed that it is for the Tribunal to accept the surrender of land which is allegedly in the possession of respondents 1 to 4 (tenants) or not in which event it is always open to authorities to reject surrender such of those lands which are allegedly in the possession of tenants.

9. In the result, the finding recorded by both the lower Tribunals that the respondents 1 to 4 are tenants in respect of land in S.No. 201 to an extent of Ac.7.00 in Surampalem village, is without power and jurisdiction and the same is set aside. The civil revision petition is accordingly allowed. No order as to costs.