
(1977) 11 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3783 of 1976

Avvaru Burraiah Choultry

APPELLANT

Vs

The Assistant Collector, Tenali and Others

RESPONDENT

Date of Decision : 18-11-1977

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 13
Constitution of India, 1950 — Article 226

Citation : AIR 1978 AP 313

Hon'ble Judges : Lakshmaiah, J

Bench : Single Bench

Advocate : T. Veerabhadrayya, for the Appellant; Govt. Pleader, G. Bhaskara Rao and T. Durga Prasad Rao, for the Respondent

Judgement

Lakshmaiah, J.—This is an application filed under Art. 226 of the Constitution of India for the issuance of a Writ of Certiorari seeking the quashing of the order dated 3rd of Nov., 1966 in A. T. A. No. 66/74 on the file of the Assistant Collector, Tenali, the 1st respondent herein.

2. The petitioner-choultry own on extent of A. 4.00 of wet land in Survey No. 107/1 and an extent of 20 cents of dry land in Survey No. 112/6 in Kaskurru Village, Bapatla Taluk, Guntur District. One Prasadam Ramaiah was cultivating the said lands. He died in the year 1969. Thereafter respondents 3 and 4, who are the sons of the deceased Ramaiah, became the cultivating tenants. They filed A. T. P. No. 24 of 1972 on the file of the Deputy Tahsildar, Ponnur under S. 16 of the Andhra Pradesh Tenancy Act 1956 and obtained a declaration that they are the cultivating tenants in respect of the aforesaid lands.

3. The case of the petitioner is that respondents 3 and 4 paid the rent at the rate of 34 bags of paddy during the years 1969-70 and 1970-71 but committed default in paying the rent for the year 1971-72. Therefore the petitioner filed A. T. P. No. 77 of 1972 on the file of the Deputy Tahsildar, Ponnur seeking the eviction of the respondents from the schedule lands. Prasadam Sambiah, the

brother of respondents 3 and 4 who was impleaded as the 2nd respondent in A. T. P. 77/72, remained ex parte. Respondents 3 and 4 filed a counter resisting the application stating inter alia that the allegations contained in the petition are all frivolous.

4. The Deputy Tahsildar found on that petition that the rent payable was 34 bags of Paddy by respondents 3 and 5, but respondents 3 and 4 delivered only 30 bags of paddy and consequently there was a default on their part which entails eviction under S. 13 (1) of the Act. In the result, the eviction was ordered against respondents 3 and 4 on 1st March 1974.

5. Aggrieved by that decision respondents 3 and 4 filed A. T. A. 66/74 on the file of the Assistant Collector, Tenali. The Assistant Collector, Tenali formulated the material point for consideration in the following terms:

"(1) Whether there was a fresh tenancy agreement in the year 1969 to pay 34 bags of paddy for the entire holding and whether the appellants committed default in payment of the maktha due by them?"

The appellate authority held that the petitioner failed to prove their tenancy as well as the default in payment of the Maktha. In the result, the appeal was allowed on 3rd Nov. 1976.

6. It is under those circumstance, the petitioner invoked the extraordinary jurisdiction of this Court under Art. 226 of the Constitution seeking the quashing of the decision rendered by the appellate authority.

7. Sri Veerabhadrayya, the learned counsel for the petitioner submits that the decision of the appellate authority is vitiated both by omission to consider certain important factors taken into account by the original authority as well as by taking certain extraneous factors for the disposal of the case and which influences the decisions thus warranting interference by this Court.

8. Sri Bhaskara Rao, the learned counsel appearing for respondents 3 and 4 submits on the other hand that the decision sought to be quashed is a finding of fact arrived at by the appellate authority on the basis of evidence adduced in this case as not warranting any interference by this Court.

9. The point therefore, that arises for determination is:

Whether the decision of the Assistant Collector, Tenali, Guntur District, dated 3-11-1976 rendered in A. T. A. No. 66/74 is liable to be quashed? The case of the petitioner as disclosed from the petition filed before the Deputy Tahsildar, " in A. T. P. No. 77/72 is that he is the Managing Trustee of Avvaru Burraiah Trust and the schedule lands comprising an extent of Ac. 4.00 wet and 20 cents dry belong to the Choultry. The father of respondents 3 and 4 was the cultivating tenant of the schedule lands previously. As he became old and could not cultivate the schedule lands himself personally, he expressed that he would surrender the possession. Respondents 3 and 4 approached the petitioner and requested him

to permit them to cultivate the schedule lands on the same terms and conditions as before. The petitioner demanded forty bags of Maktha for the entire extent. On the intervention of the mediators, it was settled at 34 bags. It was on oral agreement of lease for three years from 1969-70 to 1971-72. Respondents 3 and 4 agreed to pay the Makta during the month of January every year. They paid the Makta for the year 1969-70 and 1970-71 and obtained receipts from the petitioner, but failed to pay in spite of demands personally and through mediators for the years 1971-72 and became defaulters.

10. The petition was resisted by respondents 3 and 4 stating among other things that the annual Makta for the schedule lands was 73 bags of paddy. They have paid the entire Makta due for 1969-70 , 1970-71 and 1971-72 and therefore, the petition is not maintainable.

11. The only question that arises in this case is whether respondents 3 and 4 committed default in the matter of payment of rent at the rate of 34 bags payment of rent at the rate of 34 bags per acre for the year 1971-72. The case of the petitioner is that subsequent to the death of the father of respondents 3 and 4 in the year 1969 an oral agreement of lease for 3 years from 1969 to 1972 was entered into. Even according to the petitioner, respondents 3 and 4 paid the amount due for the previous two years but they committed default for the year 1971-72. It is the case of the petitioner that he passed on receipt to respondents 3 and 4. The petitioner could have produced the counterfoils of the receipts which would have clinchingly proved as regard the quantum of rent. He did not do so. An application giving rise to the above writ petition was filed under S. 13 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, which in so far as it is material reads thus:----

"13. Termination of tenancy. Notwithstanding anything contained in Sections 10, 11 and 12, no landlord shall be entitled to terminate the tenancy and evict his cultivating tenant during the currency of a lease except by an application made in that behalf to the Tahsildar, and unless such cultivating tenant.----

(a) has failed to pay the rent due by him within a period of one month from the date stipulated in the lease deed, or in the absence of such stipulation, within a period of one month from the date on which the rent is due according to the usage of the locality....."

Even according to the petitioner, the lease that was entered into on which reliance is sought to be placed, was entered into in the year 1969 and that was an oral lease. therefore, whether or not it is 34 bags or 30 bags that was stipulated as payable is purely a question of fact about which the statutory authorities are rendered competent to decide. Further the question whether or not there is a default also is a matter that was committed to the discretion of the statutorily-constituted authorities. The original authority in this (case) came to the conclusion that the agreement was for the payment of 34 bags, but found respondents 3 and 4 as having paid the Makta at the rate of 30 bags and under

those circumstances the original authority came to the conclusion that there was a default committed by the respondents in the matter of payment of four bags and therefore, the eviction petition was ordered for the aforesaid default committed by respondents 3 and 4. The appellate authority came to the conclusion that the onus is upon the petitioner to establish the existence of that agreement as alleged to have been entered into in the year 1969 with the stipulation to pay the 34 bags. The lower appellate Court came to the following conclusion:

"Having filed the petition seeking eviction of the respondent therein from the petition schedule lands, the burden is heavily upon him to prove the fresh tenancy and default in payment of makta by the respondents. Viewed in the light of the evidence adduced on behalf of the appellants therein, I feel that the respondent has failed to prove fresh tenancy as well as default in payment of makta by the appellants.

12. The appellate authority, therefore, came to the conclusion that the burden lay upon the petitioner herein as regards the existential aspect of the agreement with the stipulation to pay at the rate of 34 bags as makta and the default pleaded by him was not proved by the petitioner and therefore, the petition was dismissed. The question is : In exercising jurisdiction under Art. 226, whether such a finding can be interfered with.

13. No doubt, Sri Veerabhadrayya, the learned counsel appearing for the petitioner brought to my notice certain features considered by the original authority, but found omitted from being considered by the appellate authority. The jurisdiction under Art. 226 is technical. Any infringement or violation of the strict principles of evidence, calling for interference by the appellate Court, cannot be pressed into service successfully for interference by this Court under Art. 226 of the Constitution. The strict principles of evidence are not applicable to proceedings before the statutorily constituted Tribunals or authorities. For one thing, the point that was considered by the Tribunals was whether or not there was a default committed by respondent 3 and 4. The appellate Court competent to arrive at a finding of fact, recorded its finding that the burden is upon the petitioner and the petitioner failed to discharge that burden. No doubt, it is open to this Court in exercise of the jurisdiction under Art. 226 to interfere with the findings of facts recorded by the authorities concerned either when there is no evidence adduced in support of the findings sought to be impugned or when the finding is found to have been based upon legally inadmissible evidence is a matter on the basis of which this Court's interference is not warranted. If the finding that is sought to be assailed is found to have been secured on some evidentiary basis, no interference by this Court is called for. In the present case the only question was whether respondents 3 and 4 committed default or not. The ultimate finding recorded was that the petitioner did not discharge that burden and therefore, this is not a fit case where this Court can interfere with the decision of the Court below.

14. For the aforesaid reasons, I am satisfied that there are no merits in this writ petition is, therefore, dismissed, but in the circumstances without costs, Advocate's fee Rs. 150/-.

15. Petition dismissed.