

(1971) 08 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 125 of 1970

Challa Seetaramanjaneulu

APPELLANT

Vs

Yasam Gummallu and Others

RESPONDENT

Date of Decision : 05-08-1971

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 56(1)

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 13, 18

Citation : AIR 1972 AP 228

Hon'ble Judges : Sambasiva Rao, J

Bench : Single Bench

Advocate : A.V. Krishna Rao and T. Seshagiri Rao, for the Appellant; P.P. Surya Rao and Govt. Pleader, for the Respondent

Judgement

1. This writ petition has been brought for quashing the order dated 28-11-1969 of the Revenue Divisional Officer, order of the Tahsildar, Repalle dated 7th March, 1969 in A. T. P. No. 2/68.

2. The matter arises under the Andhra Tenancy Act. it is alleged by the petitioner that he is the inamdar in respect of an extent of land of 5 acres and 84 cents in Parisipadu Agraharam, which is an inam estate. The land is claimed to be the private land of the inamdar. The petitioner and his predecessors have been asserting and acting on the footing that they were the absolute owners of the land. They were either cultivating the land by themselves or leasing them under short term leases to tenants. Likewise, for the year 1956-57 the land was given to the respondent on an oral lease for one year at the rate of 141/4 bags of paddy per acre. The respondent agreed to vacate the land on 31-3-1957. Having taken the lease, the respondent filed the petition under the provisions of the Andhra Tenancy Act, 1956 in A. T. P. No. 317/56 for fixation of fair rent before the Tahsildar, Repalle. The respondent was however unsuccessful and there was no appeal against the order of the Tahsildar dismissing it. The respondent paid only 52 bags of paddy and defaulted to pay the balance of 30 bags of paddy. On

the ground of his default, the petitioner filed A. T. P. No. 157/56 for eviction of the respondent under Sec. 13 of the Andhra Tenancy Act before the Tahsildar, Repalle. This petition and some other eviction petitions filed against the respondent and other tenants of other land-holders on similar grounds went on for a long time and A. T. P. No. 157/57 came to be renumbered as A. T. P. 68/58 and later as A. T. P. 2/68. In 1968, the respondent filed an application to dismiss the eviction petition on the ground of want of jurisdiction of the Tahsildar to entertain the petition u/s 13 of the Andhra Tenancy Act, since the estate, was notified and abolished under the provisions of the Estates Abolition Act, 1948. Since the respondent and other tenants were never ready for enquiry, the Tahsildar set them ex parte and proceeded with the enquiry and passed orders of eviction. Against the order of eviction, the respondent preferred an appeal before the Revenue Divisional Officer which was allowed and later it was remanded back to the Tahsildar for fresh disposal. In the meanwhile, the petitioner had taken possession should not be disturbed. In the meanwhile, the petitioner filed a petition u/s 15 of the Abolition Act for a ryotwari patta before the Assistant Settlement Officer, Eluru. The respondent and some others also filed similar petitions u/s II of the said act. The Assistant Settlement Officer rejected the petitioner's petition and allowed the petitions of the respondent and others and directed grant of ryotwari pattas in their favour. The petitioner carried the matter in appeal T. A. S. No. 9/67 before the Estates Abolition Tribunal, Guntur.

3. The respondent preferred an appeal to the Revenue Divisional Officer, Tenali in A. T. A. 8/69 against the order of the Tahsildar, Repalle, dated 7-3-1969 dismissing his application, A. T. P. No. 2/68 for rejecting the eviction petition on the ground that the estates had been notified and taken over. The Revenue Divisional Officer, allowed the appeal and held that the Tahsildar had no jurisdiction to entertain and proceed with the petition for eviction after the estate was notified. This is the order that is challenged in the present writ petition. To complete the narration of facts it may be stated here that the Estates Abolition Tribunal allowed T. A. S. No. 9/67 preferred by the petitioner against the order of the Assistant Settlement Officer refusing to grant him ryotwari patta in respect of the land. While doing so the Tribunal followed the Full Bench decision of this Court in Penumatcha Neelakanteswaraju and Others Vs. Jaddu Mangamma and Others, . Since certain matters were pending in the Civil Court, wherein the question whether the lands are private lands or not was in issue, the Tribunal observed that the parties have to await the decision of the Civil Court before they can approach the Assistant Settlement Officer, that the petitions filed by both the parties for patta were premature; and that the only course open to the Assistant Settlement Officer was to retain the petition, so that whoever succeeded in the Civil Court as regards the question whether the lands are private lands of the petitioner or whether the respondents have got occupancy rights may apply to the Assistant Settlement Officer on the strength of the decision given by the Civil Court.

4. At this juncture, reference may be made to another set of litigation that has

been going on between the petitioner and the respondent. The petitioner filed O. S. No. 296/57 in the District Munsif's Court Repalle for recovery of rent. It was decreed, but the respondent's appeal was allowed and the matter was remanded to the Trial Court. Aggrieved by the order of remand, the petitioner brought C. R. P. No. 186 of 1970 to this Court, which is still pending.

5. The respondent in his counter-affidavit contended that Parisipadu Agraharam is an inam estate within the meaning of the Estates Abolition Act, which was notified and taken over by the Government under the Abolition Act. The agraharamdar filed O. S. No. 123/52 in the Subordinate Judge's Court. Tenali for a declaration that the Agraharam is not an estate under the Estates Land Act, and to declare the Government notification as ultra vires and void. The Subordinate Judge decreed the suit. The Government carried the matter in appeal to the High Court of Andhra Pradesh in A. S. No. 202 of 1956 (Andh Pra), which confirmed the Trial Court's Judgment. In L. P. A. No. 6 of 1961 preferred by the Government, a Division Bench of this Court reversed the decision and declared the Agraharam to be an estate under the Estates Land Act. That decision is dated 6th March, 1962. After this Judgment, the Government notified the village. Ist respondent and his father have been in cultivation and possession of the lands for decades. The Assistant Settlement Officer, granted a patta on 18-5-1967. Once the Estate had been notified stood extinguished and therefore the eviction proceedings brought by the petitioner should not be entertained by the Tribunals., The decision of the Revenue Divisional Officer is correct.

6. The crucial contention that arises and falls for determination is whether in the circumstances of the cases, the Tahsildar had jurisdiction under the Andhra Tenancy Act to entertain and dispose of the application filed under the Tenancy Act for eviction. In order to adjudicate upon this contention, it is necessary to note two or three material dates.

7. A Division Bench of this Court held in L. P. A. No. 6 of 1961 by its decision, dated 6-3-1962 (Andh Pra), that Parisipadu Agraharam was in inam estate. Thereupon, the Government notified and abolished the inam estate by its notification dated 28-2-1963. The lease by the petitioner in favour of the respondent was in year 1956. On the allegation that the respondent has committed default, the petitioner brought the eviction petition in the year 1957, itself that is A. T. P. 157/57. Even earlier than this, the respondent filed in the year 1956 A. T. P. 317/56 for fixation of fair rent u/s 6 of the Andhra Tenancy Act. This would clearly show that at that time,, the respondent was prepared to abide by the provisions of the Andhra Tenancy Act and obtain remedies therein. The decision that the village was an estate and the notification abolishing the estate came much later in the year 1962-63. It is thus very clear that the eviction proceedings, out of which the present writ petition arises, commenced long before the estate was notified and abolished. It is in the light of these crucial facts that the question will have to be decided.

8. The learned counsel for the petitioner strongly relies upon the recent Full

Bench decision of this Court in Penumatcha Neelakanteswaraju and Others Vs. Jaddu Mangamma and Others, The question, referred to the Full Bench was whether Section 56 of the Estates Abolition Act applies by that section arose before the notification. Answering this question, the Full Bench held that the provisions of Sec. 56 (1) are not retrospective in operation in divesting the jurisdiction of the Civil Courts in matters arising before the date when the section came into operation and accordingly, where a dispute is not pending on the date when the estate is notified before a Civil Court vested with the jurisdiction to decide or determine the matters referred to in that section, that dispute if it falls for adjudication on or after that date can only be decided by the Settlement Officer but where the dispute was already before a Civil Court, Civil Courts alone have jurisdiction to decide that dispute. The Full Bench further held that the jurisdiction once vested cannot be divested unless the legislature has expressly or by necessary intendment directed otherwise. The two important rules that emerge from this decision are that since Section 56 (1) of the Estates Abolition Act has no retrospective operation, where the dispute was already before the Civil Court prior to the estate was notified, the Civil Court alone Secondly, the jurisdiction once vested in the Court cannot be divested unless the legislature has expressly or by necessary intendment directed otherwise.

9. Applying these principles to the facts of the present case, it is manifest that since the eviction petition had been filed long before the estate was notified and taken over, the authority before whom the eviction petition was filed will continue to have jurisdiction to entertain it, because the jurisdiction once vested cannot be divested. There is no indication that the legislature has expressly or by necessary intendment directed that the jurisdiction vested in these Tribunals would be divested once an estate is taken over. It has to be remembered that even the respondent sought the protection of the Andhra Tenancy Act by filing the petition for fixation of fair rent. It is thus clear that both the parties thought that they were entered into. That was why, subsequently, the petitions for fair rent and eviction were filed. In view of the decision of the Full Bench, the subsequent notification under the Estates Abolition Act cannot divest the jurisdiction of the Tahsildar and the Revenue Divisional Officer, constituted as tribunals under the Andhra Tenancy Act, to dispose of the Eviction petition.

10. The next question is whether the principle laid down by the Full Bench covers only the Civil Court or whether it extends to the other Tribunals as well. From the answer given by the Full Bench, it is obvious to my mind that it can be extended even to the other tribunals, Jaganmohan Reddy, C. J., in the Full Bench case observed:----

"It is a matter for consideration therefore whether disputes which were pending before a Civil Court prior to the notification, and for the matter, before a Collector and disputed which could be said to arise after the estate is notified within the meaning of Section 56 (1) of the Abolition Act."

Therefore, the Full Bench was referring not only to the matters pending before

the Civil Court but also to matters pending before other authorities like the Collector, over disputes raised before them prior to the Abolition Act. Once again in paragraph 10 it was observed:-----

"The objection of Section 56 as we have said earlier, is to be prescribe an authority to settle a dispute of the kind referred to therein and a dispute that is not already seized by some authority cannot be said to "arise". and will arise only when steps are taken for having it adjudicated. In that sense, though a dispute may arise earlier, in fact it arises only when one person avers before a competent tribunal and the other denies it."

Thus the Full Bench was expressing the view that if a dispute was raised even before a Tribunal, it must be deemed that the dispute had been admitted before the competent authority, so that the jurisdiction to decide the dispute by the Tribunal was not taken away by the subsequent notification of the estate. Again, the learned Chief Justice observed, rejecting the argument that unless there is a binding decision by the Civil Court, of a dispute which is before it the dispute is still said to arise on the date when the estate is notified.

"It cannot, therefore, be said that while disputes pending before the other authorities are not disputes within the meaning of Section 56 (1) disputes pending before the Civil Courts are disputes which are factually present on the date when the estate is notified."

It is thus clear that the Full Bench has opined that disputes raised before the other tribunals also are of the same nature as those raised in the Civil Courts before the notification, and the jurisdiction of the Civil Court or of the tribunal could not be taken away by the subsequent notification of the estate. Therefore the jurisdiction of the Tribunals under the Andhra Tenancy Act to dispose of the petition u/s 13 of the Tenancy Act filed before the notification, is not taken away by the subsequent notification of the estate in which the lands are situate. From the narration of the facts it is seen that no only an eviction petition under the Andhra Tenancy Act but also a regular suit in a Civil Court is pending where the question whether the land is the private land of the petitioner or whether the respondent has occupancy rights it is the principal question to be decided. That was filed in the year 1957 long before the estate was notified and that matter is still pending before the Civil Court. The decision therein will bind the parties. At this juncture a few relevant provisions of the Abolition Act may be usefully referred to. Section 3 (b) lays down that on the notification of an estate, the entire estate shall stand transferred to the Government and vest in them. Clause (d) of the same section enables the Government to remove any obstruction that may be offered and to take possession of the estate. However, the proviso to the sub-section enjoined upon the Government not to dispossess any person of any land in the estate in respect of which they consider he is prima facie entitled to a ryotwari patta and if such a person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta and if such a person is a landholder pending the decision of the Settlement Officer and the

Tribunal on appeal, if any, to it as to whether he is actually entitled to such patta. I have already referred to the claim and counter claim made by the petitioner and the respondent for patta in respect of this land. The appellant Tribunal held that the applications were premature and that the Settlement Officer had no jurisdiction to grant a patta to the respondent u/s 11, because suits raising the same dispute were pending. In view of the said decisions of the Tribunal, no patta was granted because the dispute was pending in a Civil Court, where the question whether the land was private land of the petitioner or not arose for decision. Up to the time the estate was notified, the petitioner was claiming himself as the true owner of the property and the respondent as a lessee. Therefore the 1st respondent came into possession of the property only as a lessee of the petitioner. Whatever may be the rights that would ultimately be declared, prima facie the possession of the land is with the petitioner. Therefore the Government by virtue of the proviso to Section 3 (d) cannot dispossess the petitioner of the land. Clause (f) of Section 3 says that the relationship of landholder and ryot shall, as between them, be extinguished. But it does not in any way affect the right of the petitioner, because he is not claiming to be in possession of the land as land-holder as such, but as the owner. The relationship between him and the 1st respondent became that of landlord and lessee and therefore clause (f) of Section 3 does not help the contention of the respondent in any way.

11. Coming to Section 56 (1), it provides for decision of certain disputes arising after an estate is notified, which are:

- (a) "Whether any rent due from a ryot for any fasli year is in arrear;
- (b) What amount of rent is in arrear;
- (c) who the lawful ryot in respect of this Act is:

It is true that in eviction petition also the questions would arise whether the respondent was the lessee whether he was in arrear of rent or not, and if so in what amount. In an enquiry u/s 56 no order of eviction can be passed. That apart, I also hold, following the Full Bench decision, that since the eviction petition had been filed long before the notified date, the jurisdiction of the Tribunal under the Tenancy Act to adjudicate upon the petition continues. Thus Section 56 is no bar to the exercise of the jurisdiction conferred on the Tribunal under the Andhra Tenancy Act.

12. I am therefore, of the view that none of the provisions of the Estates Abolition Act is a bar to the Tahsildar disposing of the eviction petition.

13. It may also be noted that Section 18 of the Andhra Tenancy Act, which provides for certain exemptions in regard to the application of the Andhra Tenancy Act, does not exclude the lands in estates from its operation. This also is a relevant consideration to be taken into account.

14. This view of mine finds support in the decision of Gopal Rao Ekbote, J. in

Gabriel v. Ramaiah (1964) 1 AnWR 207. In that case also, there was a petition for eviction by the landlord, which was dismissed by the Tahsildar on the ground that the village in which the lands were situate was a whole inam village and that the question whether the lands constitute home-farm lands of the respondent was a matter to be decided under the Estates Land Act. In appeal the Sub-Collector held that although the lands were situate in an inam village even then the Andhra Tenancy Act would extend to such an estate and that the Tahsildar ought to have gone into the question whether the matter fell within Section 13 of the Andhra Tenancy Act. In revision to the High Court, it was contended that the Sub-Collector was wrong in holding that the Tahsildar could enquire into the question falling u/s 13 of the Act, after he held that the lands in question were situate in an estate. Dealing with this question Gopal Rao Ekbote, J. held that Sec. 18 of the Andhra Tenancy Act, does not exclude the lands situate in a whole inam village or an estate. The question of jurisdiction of the Tahsildar or the maintainability of the eviction proceedings u/s 13 of the Act depends upon the allegations made in the petition and not upon those which may ultimately be found true. If after proper enquiry, it is found that the allegations are incorrect, it follows that the petition is liable to be dismissed not on the ground that it is not maintainable, but on its merits. Therefore, merely because the petitioner-tenant chose to raise certain issues which, if found true would oust the jurisdiction of the Tahsildar or affect the maintainability of the petition, it does not put an end to the jurisdiction of the Tahsildar to determine whether the allegations made in the petition are correct. The Tahsildar, how has found that I is an estate, would have to proceed further to enquire in regard to the relationship existing between the parties, namely, whether the relationship is that of landlord and cultivating tenant as defined in the Act. The Tahsildar has incidentally the jurisdiction to decide whether the land is a private land or a ryoti land. But it does not oust the jurisdiction of the Tahsildar from enquiring into any petition u/s 13 of the Act.

15. On the basis of the foregoing discussion. I hold that the Revenue Divisional Officer was wrong in holding that after the estate was notified, the Tribunals, under the Andhra Tenancy Act have no jurisdiction to entertain the application under the Act. I hold that the Tahsildar continues to have jurisdiction to dispose of the application filed u/s 13. The order of the Revenue Divisional Officer in A. T. A. No. 8/69 dated 28-11-1969 is set aside and that of the Tahsildar in A. T. P. 2/68 dated 7-3-1969 is restored. The Tahsildar will now proceed with the enquiry and dispose of the eviction petition u/s 13 in accordance with law and also the observations made above.

16. The writ petition is accordingly allowed with costs. Advocate's fee Rs. 100/-.

17. Petition allowed.