
(2001) 09 AP CK 0037
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4357 of 1993

Digambar Rao and Another	Vs	APPELLANT
Govt. of Andhra Pradesh		RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 10
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 16(5)
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 152, 91, 92

Citation : (2001) 6 ALD 696 : (2001) 6 ALT 226 : (2001) 3 APLJ 294

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J;P.S. Narayana, J

Bench : Full Bench

Advocate : B.V. Bakshi, for the Appellant; Government Pleader for Revenue, for the Respondent

Judgement

S.B. Sinha, C.J.—One of us P.S. Narayana, J, by order dated 27-7-2001, has referred the following question to this Full Bench for its opinion:

Whether the authorities under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, have the power of review despite the fact that there is no specific provision dealing with the said power of review under the Act.

2. Mr. Bakshi, the learned counsel appearing on behalf of the petitioners submits that the primary Tribunal is a statutory authority, and it is not a Court for its jurisdiction is confined only to the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. He submits that inasmuch as there does not exist any power of review in the primary Tribunal, it dismissed the review application, and the appellate Tribunal has thus committed an illegality in reversing the decision of the primary Tribunal. He further submits the only power vested in the primary Tribunal in this regard is contained in Rule 16(5)(b) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974.

3. The learned Government Pleader for Land Ceiling appearing on behalf of the State on the other hand contends that the appellate authority exercised the power of review because fraud was alleged, and it was found proved, and therefore, it reversed the order of the primary Tribunal.

4. It is disputed before us that the primary Tribunal is a statutory authority and is not a Court, and that it being a statutory authority has to exercise its power within the four corners of the statute. The primary Tribunal also does not have any inherent power, a power, which is otherwise vested in a Court.

5. Power of review can be classified into two groups - procedural review and substantive review. Every Court or Tribunal has inherent powers, so far as procedural review is concerned. For example in a case where an order has been passed by a Court without compliance of the principles of natural justice, the Court may recall such an order.

6. In *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, , the apex Court in para 6 held:

We are of the opinion that the tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

7. The aforementioned view was reiterated in several other subsequent decisions.

8. It is, however, trite to say that in the absence of any provisions, a power of substantive review does not exist in a statutory authority. Rule 16(5)(b) of the Rules, as noticed hereinabove, confers a limited power upon the Tribunal, which power is akin to the provisions of Section 152 of the Code of Civil Procedure, 1908 (for short "the Code"). So far as the power of review of Civil Courts is concerned, the same is not governed by Section 152 of the Code, but is governed by the provisions of Section 114 read with Order XLVII, Rule 1 thereof. It must, therefore, be held that no substantive power of review inheres in the Tribunal or appellate Tribunal.

9. Attention of the Court was drawn to the decision of one of us S.B. Sinha, CJ, in *Gandaiah (died) per LRs. and Others Vs. Government of A.P.*, , wherein in para 8, it was observed:

So far as the second question raised by the learned counsel for the petitioners is concerned, the same is also covered by a decision of a Full Bench of this Court in

Radha Bai Vs. Banka Chinnayya and Others, . Seshachalapathi, J, speaking for the Full Bench held that in terms of Sections 91 and 92 both the original and appellate authorities, having vested with the powers of Civil Court, are entitled to exercise the review jurisdiction as envisaged u/s 114 of the Code of Civil Procedure.

10. The aforementioned decision, in our opinion, must be held to have been rendered per incurium as the Full Bench decision, upon which the Court relied upon, was rendered under the provisions of the A.P. (Telangana Area) Tenancy and Agricultural Land Act, 1950. Such provisions, the learned counsel appearing on behalf of the parties therein, however, were amiss in bringing to the Court's notice were not in pari materia of the said Act.

11. The case on hand, however, stands absolutely on a different footing. It is well settled principles of law that an order obtained by practising fraud upon the Court/ Tribunal would be a nullity. No litigant can keep an advantage gained out of an order, which has been obtained by practising fraud upon the Court. Whenever it is brought to the notice of the Court that a litigant has obtained an order by practising fraud upon it, then the Court is entitled to recall such a order passed by it. In this context, it is apt to refer to a well know maxim *Actus Curiae Neminem Gravabit* meaning "act of the Court should prejudice no one".

12. In the aforementioned situation, the Court/Tribunal must be held to have the power to recall its earlier order, which was obtained by practising fraud upon the Court, in order to do justice to the parties. This aspect of the matter was also considered by a learned single Judge of this Court in *Pelleti Gopala Krishna Reddy v. Land Reforms Tribunal 1987 (1) ALT 778*, and it was held:

It is open for the Tribunal, when it is convinced *prima facie* the basis of the report of the authorized officer that fraud has been played, to reopen the case and to review the order made by it. The doctrine of merger cannot apply to orders which have been obtained by fraud and which are treated by law as non est.

13. One of us V.V.S. Rao, J, in *Vangapalli Sudhakar Rao Vs. State of Andhra Pradesh*, , considered the aforementioned aspect, and noticing the judgments of the apex Court in *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, and *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, , observed in para 12:

....While exercising power under Rule 16(5)(b) of the Rules, the Tribunal or appellate Tribunal does not interfere with the proceedings u/s 10 of the Act which are in the nature of execution proceedings. The provision is intended for rectification of clerical or arithmetical mistakes due to accidental slip or omission. It is made in the interest of the declarants and it should be interpreted very widely and even at the stage of surrender u/s 10 of the Act or at the stage of computation the Tribunal is competent to rectify the mistakes...

14. We may also notice a Division Bench of this Court in P. Satyanarayana Vs. The Land Reforms Tribunal and Others, , wherein it was clearly held that even the Tribunal has the power to recall its earlier order, which was obtained by a litigant by practising fraud. Such a power of recall, we must observe is inherent in the Court when it exercises its jurisdiction of procedural review.

15. For the reasons aforementioned, we are of the opinion that since in the instant case fraud has been alleged, the power of the Court to recall its earlier order is inherent, despite the fact that there does not exist any power of substantive review.

16. The question referred to us is answered accordingly. Let the C.R.P. be listed for hearing before the appropriate Court.