
(2008) 09 AP CK 0084

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12545 of 2001

Golla Naarasappa @ Bhutappa

APPELLANT

Vs

The Joint Collector and Others

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 — Section 2(3), 3(1), 3(5)

Citation : (2008) 6 ALD 194

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Rama Rao Ghanta, for the Appellant; AGP for Revenue (Assignments) for Respondents 1 to 3 and O. Manohar Reddy, for Respondents 4 to 6, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a writ of Certiorari to quash order dated 31.05.2001 passed by respondent No.1, whereby he confirmed orders dated 18.09.1998 and 03.07.1999 passed by respondent Nos. 3 and 2 respectively.

2. Heard Sri Ghanta Rama Rao, learned Counsel for the petitioner, learned Assistant Government Pleader for Revenue (Assignments) for respondent Nos. 1 to 3, Sri O. Manohar Reddy for respondent Nos. 4 to 6 and perused the record.

3. The petitioner purchased different extents of lands admeasuring Ac. 12.08 cents in various survey numbers of Kannepalli Village, Bramhasamudram Mandal, Ananthapur District under a registered sale deed dated 02.08.1969 for a consideration of Rs. 1,000/- from respondent Nos. 4 to 6. Almost two decades later, respondent Nos. 4 to 6 approached respondent No. 3 to resume the lands and restore the same to them on the ground that the alienation made by them in favour of the petitioner is in violation of the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, "the Act"). On the basis of the said application, respondent No.3 initiated proceedings and after

enquiry he resumed the lands by holding that the alienation made in favour of the petitioner was in contravention of the provisions of the Act. Respondent No. 3 also restored different extents of lands to respondent Nos. 4 to 6. This order was assailed by the petitioner in an appeal filed before respondent No.2. The said appeal was dismissed by his order dated 31.07.1999 and the revision petition filed by the petitioner against the said order also met the same fate with its dismissal by respondent No. 1 by his order dated 31.05.2001. These orders are questioned in this writ petition.

4. In the order passed by respondent No. 3, he mentioned that the petitioner possessed a total extent of Ac.23.69 cents in terms of dry land as on the date of the purchase of the said lands and he was also assigned an extent of Ac.2.50 cents in Sy. No. 316-2 on 24.01.1991. He also held that consideration of Rs. 1,000/- for Ac. 12.08 cents was not valuable. Respondent No.3 also held that there were no bona fides on the part of the petitioner in purchasing the land as every one in the village is expected to know whether the land is assigned land or not. On these premises, he held that the petitioner was not entitled to the benefit of Section 3(5) of the Act and accordingly, he directed resumption and restoration of the lands to respondent Nos. 4 to 6. In arriving at the finding that the petitioner had Ac.23.69 cents of dry land at the time of his purchase, respondent No.3 evidently relied on report dated 15.09.1998 of the Mandal Revenue Inspector as could be seen from reference No.5 of his order. Respondent No. 3 has not mentioned in his order whether all these lands stood in the name of the petitioner alone or any of his other family members.

5. Respondent No.2 in his order agreed with the reasons given by respondent No.3 while disposing of the appeal. He stated that a perusal of the records showed that at the time of the petitioner's purchase, he had Ac.23.69 cents apart from having pawn broking and sheep rearing business. In the grounds of revision filed by the petitioner before respondent No.1, apart from pleading that he purchased the land for valuable consideration in good faith, the petitioner specifically pleaded that respondent No.3 has not properly arrived at the extent of the land held by him in holding that he owned Ac.23.69 cents without any proof. Respondent No.2 also pleaded that the petitioner was a member of a joint family with himself, his brother and his father as members and respondent No.3 has not properly calculated the individual holdings. He further stated that ROR patta passbook issued to the petitioner shows that he had only Ac. 1.73 cents, Ac. 1.99 cents and Ac.0.41 cents in Sy.Nos.257-4D, 298-2D and 256-IB respectively and that the finding of respondent No.3 that he owned Ac. 23.00 is a fanciful imagination, which did not bear any truth. The petitioner's plea was that if a proper computation of individual holdings from out of the joint family holding is made, he shall be treated as a landless poor person.

6. Section 3(1) of the Act prohibits transfer of assigned land either before or after commencement of the Act and the said provision declared such transfer as null and void. However, Section 3(5) carved out an exception under which

transfer made in favour of landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of the Act is saved.

7. Section 2(3) defined "landless poor person" as a person, who owns land of an extent of not more than 1.011715 hectares (Ac.2.50 cents) of wet land or 2.023430 hectares (Ac.5.00) of dry land or such other extent of land as has been or may be specified by the Government in this behalf from time to time, and who has no other means of livelihood.

8. Respondent No. 1, while affirming the orders of respondent Nos.2 and 3, solely relied on the admission of the petitioner contained in para 3 of his grounds of revision that he owned Ac.4.13 cents of land at the time of purchase and therefore the said fact itself speaks that he possessed landed property and that he is not entitled for the benefit u/s 3(5) of the Act.

9. In my considered view, respondent No. 1 made a perfunctory approach. As noted above, it is the specific plea of the petitioner that the conclusion arrived at by respondent No. 3 that he owned an extent of Ac.23.69 cents at the time of purchase of the assigned land was his imagination and that he did not own such a land at all. He specifically pleaded that he was owning only Ac.4.13 cents of land apart from pleading that his joint family consisted of his father, himself and his brother.

10. In *Boddeda Sambamurthy v. The Tahsildar, Anakapalli* 1998 (2) ALT 304 a Division bench of this Court held that while considering the plea of landless poor person u/s 3(5) of the Act, shares of members of a joint Hindu family have to be considered on the basis of notional partition. Respondent No. 1 ought to have considered the plea of the petitioner that he was only one of the three members of the joint family and that on a notional partition he would fall within the definition of "landless poor person".

11. No doubt, as contended by Sri O. Manohar Reddy, the burden is on the person, who claims that he falls within the exception of Section 3(5) of the Act, but at the same time, the respondents cannot abdicate their responsibility in arriving at the proper conclusion with reference to the facts on record. The question whether at the time of purchase of the assigned lands the petitioner and his family members were owning the landed property in excess of limits prescribed under the provisions of the Act or not should after all have been adjudicated with reference to the available record.

12. Though on the basis of the report of Mandal Revenue Inspector, respondent No.3 arrived at the finding that the petitioner's family own Ac. 23.69 cents of the land, the petitioner had consistently questioned the said finding before respondent Nos.2 and 1 in the appeal and revision respectively. Unfortunately, neither of the two respondents have gone through the record and given specific findings in this regard. It is the obligation of respondent Nos. 1 and 2, who act as quasi-judicial bodies, to adjudicate the dispute on the basis of the facts available

on record and not on surmises or the reports submitted by the subordinate officers. In this view of the matter, I am of the view that respondent No. 1 has not decided the revision in the manner in which he ought to have decided.

13. As regards the finding of respondent No.3, that the petitioner was not a bona fide purchaser, the said finding is rendered on a surmise that everybody in the village right from the shepherd to the big landlord is expected to know which are the assigned lands and which are not. There can be no such presumption unless there is material to show that the petitioner was aware of the fact that the lands are assigned lands.

14. With regard to the finding of respondent No.3 that the consideration of Rs. 1,000/- for Ac. 12.08 cents was not valuable, he has arrived at this finding by comparing the transaction with other transactions. One such transaction related to Ac.9.22 cents, which was purchased for Rs. 1,000/- on 13.07.1967. Another transaction related to Ac.8.28 cents, which was purchased for Rs. 1,000/- on 02.02.1968. In these two transactions, the consideration per acre worked out to Rs. 108/- and Rs. 128/- respectively. A comparison of these sale transactions shows that the average value of the property per acre in the vicinity where the lands in dispute are situated is around Rs. 100/- per acre. That being so, consideration of Rs. 78/- per acre is not so low as to drive respondent No.3 to come to the conclusion that consideration was not valuable. The finding of respondent No.3 in this regard is therefore not sustainable.

15. For the abovementioned reasons, the writ petition is allowed. The order of respondent No. 1 is quashed and the matter is remitted to respondent No. 1 for fresh consideration with regard to the question whether the petitioner and his family members had the extents of lands at the time of the purchase of the property by the petitioner which disentitle him to claim that he was a landless poor person at the time of the purchase of the assigned lands. Respondent No. 1 shall pass an order afresh, after giving the petitioner and respondent Nos.4 to 6 a reasonable opportunity of hearing and after a thorough inspection of the records. He shall complete this exercise within a period of three months from the date of receipt of a copy of this order.

As a sequel to disposal of the writ petition as indicated above, WPMP. No. 15575 of 2001 filed by the petitioner for interim relief is disposed of as infructuous.