
(2001) 08 AP CK 0075

In the Andhra Pradesh High Court

Case No : CRP No's. 1047 and 1048 of 1998

Gonapa Atchutharamayya

APPELLANT

Vs

District Collector, Srikulam and Others

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 10(1), 12(4), 3, 8, 9
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2002) 1 ALD 266 : (2001) 2 AnWR 561 : (2001) 2 APLJ 438

Hon'ble Judges : S.B. Sinha, C.J

Bench : Single Bench

Advocate : C. Subba Rao, for the Appellant; Government Pleader for Land Ceiling, for the Respondent

Final Decision : Dismissed

Judgement

1. These revision petitions arise out of a judgment dated 2-2-1998 passed by the learned Land Reforms Appellate Tribunal in LRA Nos. 12 and 26 of 1992 whereby and where-under an appeal preferred by the petitioners herein was dismissed.

2. These petitions are inter-connected, as much as each one of the declarants/petitioners are interested persons. Smt. Jallu Varalaxmi's foster-daughter Smt. G. Ramulamma, is the wife of Gonapa Chelamayya, who is the declarant in LCC No. 247/I CH/75. Gonapa Siva Prasada Rao, revision petitioner in CRP No. 1048 of 1998, is the Legal Representative of Gonapa Chelamayya (since died). Gonapa Atchutharamayya, Revision Petitioner in CRP No. 1047 of 1998, is the husband of Smt. Gonapa Chandrasa, the foster-daughter of Gonapa Chelamayya, the declarant in LCC No. 248/ICH/75.

3. In short, the fact of the matter is as follows:

4. Smt. Jallu Varalaxmi filed a declaration, which was numbered as LCC No. 246/

ICH/76, before the primary Tribunal and the Tribunal after due enquiry, u/s 9 of the Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as "the Act" for the sakes of brevity) passed an order on 23-12-1975 determining that she was holding lands equivalent to 0.6671 S.H. in excess of the ceiling area as on 1-1-1975 which she was liable to surrender u/s 10(1) of the Act. Against the said order of the primary Tribunal an appeal was preferred vide LCA No.8 of 1976 and the same ended in dismissal on 9-2-1976 with an observation that the appeal was filed only for the reason that the primary Tribunal did not make an observation that the surplus land should be reverted to Smt. G. Ramulamma and that the declarant was not aggrieved by the primary Tribunal's order in any other way. Accordingly, an amendment was made to the order dated 23-12-1975 to the effect that the surplus land shall revert to the owner viz., Gonapa Ramulamma u/s 12(4) of the Act and, however, the said amendment dated 7-4-1997 in LCC 246/ ICC/75 has not been implemented in view of the orders of the Appellate Tribunal's order in the appeal filed by Gonapa Chelamayya, declarant in LCC No. 247/ICH/75.

5. The primary Tribunal in its order dated 15-4-1976 determined that Gonapa Chelamayya, declarant in LCC No. 247/ICH/ 75, was holding land equivalent to 5-3762 SH in excess of the ceiling area, which he was liable to surrender u/s 10(1) of the Act. The matter was carried in appeal and the Appellate Tribunal in its order dated 29-5-1978 in LRA No. 88 of 1997 rejected the first, second and third contentions, viz,, that an extent of Ac. 21-46 was figured by the declarant to his foster-daughter Chandrahasa and hence this extent should be excluded from his holding; that an extent of Ac. 20.11 was gifted by his father to Gokarneswara Swamy Temple, which was constructed by his father himself and this land should be excluded from his holding; and that the lands in possession of tenants should be excluded from his holding, and ordered that the lands to which the children of the deceased sisters of the declarant are entitled, but were in possession of the declarant shall be excluded from the holding of the declarant observing that the wife is entitled to the vested remainder which accrues to her only on the death of Jallu Varalakshmi, which might give rise to separate proceedings u/s 18 of the Act, as and when the said Varalakshmi dies. The appellate Tribunal accordingly modified the computation of surplus to 1.886 1/3 S.H. The matter was carried in revision before the High Court vide CRP No.3872 and 3593 of 1978 and the same were allowed by an order dated 21-6-1979 with the following directions:

- "1. The share of the sons of the sisters of the declarant, covered by Exs. P58 to P78 (self acquired lands of the declarant) should be excluded from the holding of the declarant.
2. The lands given by the father of the declarant to his sisters (Ac. 12.57) should be excluded from the holding of the declarant.
3. The extent of Ac. 2.11 endowed in favour of Anjansya Temple in the year 1960 should be excluded from the declarant's holding.

4. The extent of Ac.21.46 cents gifted by the declarant to his foster-daughter by name Chandrahasa, should be excluded from the declarant's holding."

6. The primary Tribunal with a view to comply with the directions of the High Court while considering the matter afresh framed the following points for consideration:

"1. Whether the lands held by Smt. Jallu Varalaxmi are to be included in the holding of the declarant in LCC No. 247/ICH/75 or else who has to surrender the surplus determined in her LCC No. 246/ICH/75.

2. Whether there are any Bilo Lands to be classified as dry lands.

3. Whether there are dry lands which were wrongly classified as Coconut Topes.

4. What is the extent surplus to be surrendered by each of the declarants in LCC 247/ICH/7 and LCC 248/ICH/75."

and in its order dated 15-3-1992 determined the surplus lands as on 1-1-1975 in LCC No. 246/ICH/75 as 0.6671 S.H. holding that the same has become final and consequently ordered that Sri Gonapa Siva Varaprasada Rao, who is the legal heir of the vested remainder-holder, is liable to surrender the above surplus land. As regards LCC No. 2477 ICH/75, the Primary Tribunal taking into consideration the order of the appellate Tribunal in LRA No. 88 of 1977 dated 29-5-1978 and the order of this Court in CRP Nos. 3872 and 3593 of 1978 whereby and whereunder certain extents of lands were ordered to be excluded from the holding of the declarant, arrived at the finding that the declarant was holding less than the ceiling area. By then as the declarant died, his son Prasada Rao was directed to file a fresh declaration u/s 18 of the Act in accordance with the determination made in LCC No. 246/ICH/75. Insofar as LCC No. 24S/ICH/75 is concerned, the Tribunal held that the declarant in the said LCC was holding land equivalent to 0.250 1/3 in excess of the ceiling area.

7. Aggrieved by the said order of the primary Tribunal, the declarants in LCC 248/ICH/75 and LCC 246/ICH/75 preferred appeals before the Land Reforms Appellate Tribunal, and the appellate Tribunal in its judgment dated 2-2-1998, while dismissing the same, observed:

"Thus, in any view of the matter, I see the present appeals filed by the declarants are all demeritted one and the direction given by the Lower Tribunal to file fresh declaration u/s 18 including the above lands computed in the order referred by the Lower Tribunal dated 15-3-1992 is legally correct and there are no grounds to interfere in the common order passed by the Lower Tribunal and, therefore, I answer the point in favour of the respondent/State and against the appellants."

8. These revision petitions have been filed against the said appellate order.

9. The only question, which arises for consideration in these revision petitions, is as to whether a fresh declaration is required to be given in terms of Section 18 of the Act.

10. The contention of the petitioners is that as the original declarant Jellu Varalaxmi having died during the proceedings, her life estate would not fall within the purview of the said Act. And consequently, the order declaring the land as surplus is illegal. The learned Counsel would contend that fresh declarations may be required to be filed by the legal heirs of Varalaxmi and Ramulamma, but the land held by them cannot be computed for the said purpose. No presumption as has been done by the learned Tribunal can be raised as regards acquisition of land. It was contended that the ceiling being fixed, the subsequent acquisition, even if any, would have no effect.

11. Section 8 of the Act deals with "Declaration of Holdings", Section 10 deals with "Surrender of Land in certain cases", Section 18 deals with "Declaration of future acquisitions" and Section 19 thereof with "Declaration to be furnished before Registering Officer".

12. Subsequent acquisition by the owner, in the opinion of this Court, cannot be excluded from computation of the holding of lands at the lands of the heirs. Section 18 of the Act speaks of future acquisitions after the notified date. It casts an obligation upon the proceed to make a fresh declaration. Such declaration in terms of a legal fiction created thereunder would be a declaration only u/s 8 of the Act. As per Explanation I appended to Section 18 of the Act, the number of members of a family unit shall be reckoned with reference to the date of such future acquisition, usufructuary mortgage, lease, marriage, adoption or alteration, as the case may be. Explanation V appended to Section 18 also categorically states that when a land held by a limited owner reverts to the person having a vested interest in the remainder by virtue of Sub-section (5-A) of Section 12 or otherwise, there shall be deemed to be an acquisition of such land by such person for the purposes of Section 18 of the said Act. Thus, by reason of the said explanation a legal fiction has been created.

13. In view of the aforementioned provisions, the concept of the owner must be understood in terms of Sub-section (5-A) of Section 12 of the Act. Clause (n) of Section 3 of the Act defines the word "owner". It also includes the persons having limited interest of filing declaration u/s 18 of the Act.

14. It is not in dispute that Varalakshmi and Ramulamma died and thus the holdings of the lands possessed by them by operation of law would devolve upon the declarants as a result whereof his/her holding increased. By issuing a direction to the petitioners to file a fresh declaration, in the aforementioned situation, no illegality is committed by the primary Tribunal, as also the appellate Tribunal.

15. This aspect of the matter is covered by a decision of this Court in P. Mangayamma and others v. State of Andhra Pradesh, 1997 (3) APLJ 287, wherein a learned single Judge of this Court has held:

The learned Counsel for the petitioners herein further brought to my notice the provisions contained in Cause (n) of Section 3 of the said act which was

introduced by an Act 10 of 1977 and which came in force with effect from 1-1-1975. It specifically excludes the person having limited interest from filing declaration u/s 18 of the said Act after the person acquires limited interest in the property. Sub-clause (n) of Section 3 of the said Act reads as under:

"Owner" includes a person by whom or in whose favour a trust is created; (....) but does not include a limited owner and in the case of any land not held under ryotwari settlement, a person who is or would be entitled to the grant of a ryotwari patta or to the registration as an occupant in respect of such land under any law for the time being in force providing for the conversion of such land into ryotwari tenure and where there is no such law, any person holding such land immediately before the specified date otherwise than in any one of the capacities specified in items (ii) to (v) Clause (i) (but does not include a limited owner).

Reading the aforesaid clause, this Court is of the considered view that the above aspect was not taken into consideration by the lower Tribunal as well as the appellate Tribunal. Taking into consideration of the legal effect of all the provisions as narrated this Court hold that in the present case, the 1st petitioner acquires additional lands by way of Will alleged to have been executed in her favour by her father giving her limited interest. As long as she is alive, she can use usufruct without filing declaration u/s 18 of the Act....."

16. The Courts below are final Courts of fact. This Court has a limited jurisdiction to interfere in such a matter. It is now a well-settled principle of law that while exercising its jurisdiction u/s 115 of the CPC or under Article 227 of the Constitution of India, this Court can interfere only in the event the Courts below have committed a jurisdictional error. Having regard to the aforementioned decision (supra), this Court is of the opinion that no case has been made out for interference of the impugned judgment. The civil revision petitions are dismissed accordingly. No order as to costs.