

(1981) 09 AP CK 0008

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 82 of 1980

Government of Andhra Pradesh

APPELLANT

Vs

Gnaneshwar Rao

RESPONDENT

Date of Decision : 18-09-1981

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 10, 9

Citation : AIR 1982 AP 252

Hon'ble Judges : Muktadar, J

Bench : Single Bench

Advocate : Govt. Pleader, for the Appellant; B. Prakasarao, for the Respondent

Judgement

Muktadar, J.—The State has referred this revision against the order dated 26-10-1978 passed by the Land Reforms Appellate Tribunal, Nizamabad, excluding pote kharab lands from the holding of the respondent declarant.

2. In order to appreciate the contentions advanced by the learned Government Pleader, it is necessary to state certain facts. The respondent filed his declaration and eventually after enquiry he was found to be holding land in excess of the standard holding. Thereafter, proceedings under S. 10, Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 were initiated and the respondent was called upon to surrender the land. The respondent declarant filed a petition before the Primary Tribunal in proceedings under S. 10 of the Act, to exclude pote kharab extent from the holding of the respondent. That petition was dismissed. The respondent preferred an appeal to the Appellate Tribunal which allowed the appeal and excluded the pote kharab lands from the holding of the respondent. Aggrieved by the said order of the Appellate Tribunal, the State has preferred this revision.

3. Mr. Gopalakrishna Murthy, the learned Assistant Government Pleader, contends that the Appellate Tribunal did not have the jurisdiction to go behind the order of the Primary Tribunal which had become final under S. 9 of the Act and exclude

the pote kharab. The question whether pote kharab extent existed or not was not at all raised by the respondent declarant in the proceedings under S. 9 of the Act. Submits the learned Government Pleader that proceedings under S. 10 of the Act could be considered to be one by way of execution of the order passed under S. 9 of the Act, and therefore, the executing court cannot go behind the order. The learned Govt. Pleader applies this analogy to the present proceedings and in support thereof has brought to my notice the decision of this court in Govt. of Andhra Pradesh v. Veeranna (1980) 2 APLJ 25. On the other hand, Mr. B. Prakashrao, the learned advocate for the respondent has vehemently contended that while a revision is before the High Court either under S. 115, Civil P. C. or under the Act, it would mean that the entire case is before the High Court and the High Court in exercise of its powers of supervision or revision, could correct any mistakes occurring in the case. I regret I cannot accede to the contention advanced by Mr. Prakash Rao. It is to be noted that proceedings under S. 9 of the Act could be termed as proceedings on the original side and once orders are passed in those proceedings by the Tribunals and had become final, then proceedings under S. 10 of the Act would be considered to be proceedings on the execution side. When the matter is in the execution stage, it would not be open to the Appellate Tribunal to go behind the orders passed on the original side under S. 9 by the primary Tribunal which had become final. This is what exactly my learned brother Madhava Reddy, J. had decided in Veeranna's case 1980 2 APLJ 25 and I have been consistently following that principle in a number of cases decided by me. The ruling cited by Mr. Prakash Rao may apply to a case where the matter comes to the High Court on the original side and if some illegal orders are passed, then the High Court could correct those orders in spite of the fact that no review petition was filed because, the whole case is before the high Court. Even so, the High Court in exercise of its revisional powers on the execution side, cannot go behind the order passed on the original side and correct the mistake or make any amends unless there is inherent lack of jurisdiction in the original court in which case the decree will be considered to be non est.

4. Hence, I allow this revision and set aside the order of the Appellate Tribunal and direct the Appellate Tribunal to include the lands which had been excluded from the holding of the respondent declarant on the basis of being pote kharab. There will be no order as to costs Advocate's fee Rs. 150/- (Rupees one hundred and fifty only).

5. Revision allowed.