(1977) 08 AP CK 0008

In the Andhra Pradesh High Court

Case No : C.R.P. No. 2327/76

Govt. of Andhra Pradesh — APPELLANT

Vs

Kommareddi Mahalakshmamma — RESPONDENT

Date of Decision : 16-08-1977

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 21, 3(j), 7(3)

Citation : (1977) 08 AP CK 0008

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : Y.B. Tata Rao, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Rao

1. In this revision petition filed by the Government u/s 21 of the Andhra Pradesh Land Reforms (Ceiling on Agrl. Holdings) Act, 1973 (hereinafter called the Act), the only question that arises for consideration is whether 0-44 cents in R S. No. 247/2 of Pothunuru village, can be treated as land within the meaning of Section 3 (j) of the Act. The contention of the respondent-declarant is that the said land is being used for keeping hayrick for over 30 years and therefore it should be excluded from her holding. In the verification report it was mentioned that the land was kept waste for six faslis from 1369 fasli onwards and that it was classified as falling within Class ''C'' The Primary Tribunal inspected the said land and observed that there were no crops raised for the last six years, that the land was used for keeping hayricks and that though it was registered as wet, it should be treated as dry for the purposes of computation of the holding of the declarant-respondent.

2. The respondent-declarant preferred an appeal before the Land Reforms Appellate Tribunal, and contended that the Primary Tribunal erred in classifying

the land as dry land that the same could not be treated as ''land'' and therefore it should be excluded from her holding.

3. The Chairman of the Appellate Tribunal held that the land was being used for keeping hayrick, that it was not being used for purposes of agriculture and that it is being used for non-agricultural purpose which is beneficial to an agriculturist and therefore it should be excluded from the holding of the respondent-declarant.

4. The Member of the Tribunal however differed from the view taken by the Chairman and held that the land is classified in the revenue accounts as wet land and wet assessment was being levied by the Government on the said land, that though it is kept as waste for the benefit of the ryot or for any other reason, its classification could not be changed, and that if a land was set apart for keeping hayricks or for carrying on other agricultural operations such as thrashing or storing of paddy or for keeping dung or for keeping waste after feeding the cattle or even for dumping earth during the agricultural operations, it could not be said that the land was not used for purposes of agriculture or for purposes ancilliary thereto.

5. The Government has now come up in revision contending that the view taken by the Chairman of the appellate Tribunal that 0.44 cents of land should be excluded from the holding of the respondent-declarant is erroneous.

6. Sri Y.B. Tata Rao, learned counsel for the respondent contends that the land has not been used and is also not capable of being used for agriculture, that it is a mound which is kept waste and is only used for the purpose of keeping hayricks and therefore it could not be treated as ''land'' within the meaning of Section 3 (j) of the Act.

7. u/s 3 (j) of the Act, ''land'' means :

Land which is used or is capable of being used for purposes of agriculture, or for purposes ancilliary thereto, including horticulture, forest land, pasture land, waste land, plantation and tope ; and includes land deemed to be agricultural land under this Act.

Explanation I :--Where any land is held under ryotwari settlement it shall, unless the contrary is proved, be deemed to be land under this Act;

Explanation II :--''Land'' shall not include the land appurtenant to a building.

8. Under this section, the following categories of lands are treated as ''land'' :--

(1) Land used for purposes of agriculture ;

(2) Land which is capable of being used for purposes of agriculture ;

(3) Land which is used or capable of being used for purposes ancilliary to agriculture ;

(4) Land used for horticulture, forest land, pasture land, waste land, plantation

and tope and ;

(5) Land which is deemed to be agricultural land under the Act.

9. The last category probably has reference to the lands which are deemed to be agricultural lands u/s 7 (3) of the Act.

10. So far as lands in question are concerned, admittedly they are registered as wet in the revenue accounts of the Government and wet assessment is being levied on them. Admittedly the land in question is under ryotwari settlement. Therefore Explanation I to section 3 (j) of the Act applies and the land shall be deemed to be ''land'' under the Act unless the contrary is proved. The land appears to be part of the agricultural lands of the respondent and it appears to have been set apart for keeping hayricks. The land in question has therefore been set apart for storing hay which is necessary for feeding the cattle. In the circumstances, though the land is not actually used for an agricultural purpose, still it cannot be said that it is not capable of being used for purposes of agriculture or for purposes ancilliary thereto. The very fact that the land is held under a ryotwari settlement and is registered as wet in the revenue accounts and wet assessment is being paid, shows that it is capable of being used for agricultural purposes. The respondent has been using the land for keeping hayrick, which cannot be said to be a purpose which is totally disassociated from agriculture. No doubt, if the said land is appurtenant to a building where the ryot resides and it is used for storage of hay, it cannot be treated as ''land'' u/s 3 (j) of the Act. In the instant case, there is no evidence produced to show that the said land is appurtenant to any building. On the other hand, the land is registered as wet land and is held under ryotwari settlement and is also used for storage of hay which can be laid to be a purpose ancilliary to agriculture.

11. Even otherwise the definition of ''land'' u/s 3 (j) of the Act includes waste land. Therefore even if the land which is registered as wet land, is kept waste by the ryot for his own purposes, it would not fall outside the definition of ''land'' in section 3 (j) of the Act.

12. Sri Tata Rao, relies upon the ruling of this Court in State Vs. V. Venkatramaiah 1977 (2) APLJ. 32. In that case it was held that a land, occupied by a tank used solely for drinking purposes of cattle, is not ''land'' and that ''land'' occupied by drainage channel is ''land'' within the meaning of Sec. 3 (J) of the Act. That case has therefore no application to the facts of the present case. The learned counsel for the respondent then relied upon an unreported decision of mine in C.R.P. No. 826/76 dated 18-10-1976 (Krothapalli Jagannadha Lakshmi Subrahmanya Vara Prasad Vs. The Government of Andhra Pradesh). There it was contended that land occupied by a filed cattle shed, and used for stocking hay and storing manure should not be treated as ''land'', and it was held to be not ''land'' within the meaning of section 3 (j) of the Act. In that case, a permanent structure i.e., a filed cattle shed was constructed on the land and the adjoining land was being used for storing hay and manure and therefore it could not be

said that the land was used for agriculture or for any purpose ancillary thereto. The facts of that case being different from the facts of the present case, it does not help the respondent in this case. For the foregoing reasons, I hold that the land of the extent of 0-44 cents in R.S. No. 247/2 of Pothunur village, should be treated us ''land'' falling within section 3 (j) of the Act, and that it should be included in the holding of the respondent. Accordingly the revision petition is allowed, but in the circumstances without costs.

