
(2004) 07 AP CK 0095

In the Andhra Pradesh High Court

Case No : CRP No's. 6552 of 2003 and Batch and 81 of 2004

Ippili Thirupathi

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 16(5)

Citation : (2004) 5 ALD 479 : (2004) 6 ALT 173 : (2004) 3 APLJ 91

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : C.V. Bhaskar, for the Appellant; Government Pleader for Land Ceiling for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—As the issue involved in all these revision petitions is one and the same, they are being disposed of by a common order.

2. The petitioners herein are the third parties to the proceedings under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and Rules, 1974 (for short "the Act and the Rules").

3. The factual matrix of the case in brief is as follows:

4. The original declarant-late Kanugula Rammurthy filed a declaration u/s 8 of the Act. During the pendency of the proceedings, the original declarant died and thereafter his wife and children were impleaded as his Legal Representatives. Basing on the verification report submitted by the Mandal Revenue Officer, the Additional Revenue Divisional Officer (Primary Tribunal) passed an order u/s 9 of the Act, dated 28-2-1987 by holding that the deceased declarant was holding surplus land equivalent to 0.5483 Standard Holdings. Thereafter, the lands of the petitioners and the lands of the deceased-declarant were selected for surrender. Against the selection of the lands by the Tribunal, the legal representatives of the

deceased declarant preferred LRA.No. 3 of 1989 and the petitioners herein preferred L.R.A. Nos. 4 of 1989 to 10 of 1989 on the file of the Land Reforms Appellate Tribunal. By order, dated 30-4-1992 the Appellate Tribunal set aside the order of the Land Reforms Tribunal and remanded the matter to the Primary Tribunal with certain directions. In pursuance of the remand order, the Special Deputy Tahsildar submitted a report after due verification of the records. During the pendency of the trial, the petitioners herein along with other petitioners filed an objection petition in LCC No. 603/ SKL/75 seeking to delete "A & B" Schedule mentioned lands, stating that the verification report of the then Tahsildar of Srikakulam does not reflect the real state of things and sought for fresh verification. On hearing both sides, the Tribunal by its order, dated 17-6-1996 held that it has no jurisdiction to review its own orders passed on 21-10-1976. Aggrieved by the same, the appellants preferred LRA Nos.3 of 96 to 10 of 1996 seeking to set aside the order of the Primary Tribunal and to delete "A&B" schedule lands mentioned therein. By a common order dated 28-8-2003, the Appellate Tribunal dismissed all the appeals holding that the lower Tribunal has rightly held that it has got no inherent power to review its order.

5. Challenging the same, the present revision petitions have been filed by the petitioners who are third parties to the proceedings.

6. From a reading of the record it could be seen that during his lifetime, the declarant appears to have played fraud in disclosing the lands to be surrendered under the proceedings. As a result of the mischief played by the original declarant, the petitioners were put to great hardship and they were forced to lose their valuable right over the properties owned by them. The petitioners herein lost their case both before the Primary Tribunal and the Appellate Tribunal. In the meanwhile, the original declarant died. The Legal Representatives of the declarant also filed a petition before the Primary Tribunal with a specific averment that the original declarant did not file the declaration with correct material facts and accordingly, they sought for the deletion of the lands which were shown in the declaration. In other words, the relief prayed for by the legal representatives of the declarant and the petitioners was one and the same. As the appellate authority passed orders dismissing the appeals and confirmed the order of the Primary Tribunal, they filed the present revision petitions.

7. Now, the only question that falls for consideration is whether the review is maintainable under Rule 16(5)(b) of the Act and Rules ?

8. Rule 16(5)(b) of the Act, which is relevant, is extracted for ready reference as under;

"Nature of proceedings before the Tribunal:--(1).....

(2).....

(3).....

(4).....

(5) The R.D.O., the District Collector, Tribunal and the Appellate Tribunal shall have the power;

(a).....

(b) To correct any clerical or arithmetical mistakes in judgments or errors arising therein from any accidental slip or omission, either of its own motion or on the application of the parties."

9. From the order of the lower appellate Tribunal, it could be seen that relying on the decisions reported in Pelleti Gopala Krishna Reddy v. The Land Reforms Tribunal (Additional Revenue Divisional Officer), Nellore 1987 (1) ALT 778, and Digambar Rao and Another Vs. Govt. of Andhra Pradesh, it was held that under Rule 16(5)(b) of the Rules there was no inherent power in the Tribunal to review its own orders passed u/s 9 of the Act.

10. The lower Appellate Court while applying the principles laid down in Digambar Rao's case (supra) held that if A&B schedule lands are deleted from the declaration of the declarant, it amounts to substantial review of its own order. The appellate authority further distinguished the principles laid down by this Court in Pelleti Gopala Krishna Reddy's case (supra) and held as not applicable in the present case.

11. Of course, while distinguishing the facts and circumstances of the case and also law, the Appellate Court made an 2004(5) FR 31 elaborate discussion and held that under Rule 16(5)(b) of the Rules, there was no power of review available. In Pelleti Gopala Krishna Reddy's case (supra) this Court held as follows :

"But the traditional remedy of review referred to in the CPC is based upon the specified grounds of error apparent on the face of the record discovery of new and important matters of evidence and analogous reasons. But those limitations, which are peculiar to the remedy of review provided by the Code of Civil Procedure, cannot be applied where the Court is acting in defence of its own process, on the allegation that the parties, who have obtained the orders have played fraud on the Court. Fraud cannot be the basis of any public act, however, frequently it may be resorted to. In this case, the ground on which the case has been reopened is that the petitioners used faked and bogus receipts showing payment of lands revenue. In such a case, not only the Court but every Tribunal which has been the victim of that foul play should be allowed to recall its orders passed upon or influenced by such polluted evidence."

12. The net result of the decisions referred to in Digambar Rao's case (supra) and Pelleti Gopala Krishna Reddy's case (supra) is that when fraud or misleading of facts was brought to the notice of the Court, the power of review is inherently available to any Court, Tribunal or even for a quasi-judicial authority. When it was brought to the notice of the Court that the orders were obtained in a fraudulent manner, it deserves to be recalled or set aside, even in the absence of

any requisite provisions either in the Act or in the Rules. The law is well settled in this regard.

13. The Supreme Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, held that if a party obtains an order fraudulently to gain advantage over the other side, then he would be guilty of playing fraud on the Court as well as on the opposite party.

14. A Full Bench of this Court in *Digambar Rao's case (supra)* held as follows:

"It is well settled principle 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 an order passed by it. In this context, it is apt to refer to a well-known maxim *Actus Curiae Neminem Gravabit* meaning "act of the Court should prejudice no one".

15. From the above decision of the Full Bench of this Court it is clear that when fraud was pointed out and established by either of the parties or persons interested in the lis, the Court has got inherent jurisdiction to recall its own order, unfettered by the principles of limitation or any procedure.

16. On perusing the order passed by the lower Appellate Tribunal, I am of the view (hat it interpreted the decisions rendered in *Digambar Rao's case (supra)* and *Pelleti Gopala Krishna Reddy's case (supra)* in a narrow perspective and when the Court fails to understand the eagerness of the Courts to scuttle all the commissions and omissions of a litigant, which amounts to fraud not only on the Court but also on the order parties including those who have substantial interest in the litigation. The Court cannot be used as a dais for playing fraud or misrepresentation. No doubt, the parties are at liberty to take all possible pleas and establish the same before the Court as law permits. A litigant should obtain the relief from the Courts by adopting proper methods. If the litigant establishes a statement or a plea before the Court by adopting fraudulent methods, in the interest of justice, he can be summarily thrown out by the Court at any stage of litigation. From the judgments referred to above, it is well settled that no party to the litigation can ever be permitted to obtain an order by playing fraud on the Court or on the other parties. Even though there is no specific provision as regards the jurisdiction vested in the Courts, in cases where the litigation obtains orders from the Courts by playing fraud or misrepresentation, the orders should be treated as illegal.

17. In the present case, it is the case of both the legal representatives of the declarant as well as the petitioners that the declarant has intentionally included some of the lands belonging to the petitioners as his own and as a result, the lands of the petitioners were surrendered to the Government.

18. From a perusal of the impugned order of the appellate authority, it could be

further seen that a report had been called for from the Special Deputy Tahsildar, wherein it is stated that certain lands, which were registered in the name of the declarant were not shown in the declaration and some of those lands were subsequently alienated to others for some consideration and that the legal representatives of the declarant instead of proposing alternative lands for surrender, they are agitating for the deletion of the lands, which were shown in the declaration, with a view to prolong the litigation unnecessarily that they did not bother to pray the Tribunal to include the lands registered in their name and as per the recent verification report of the Special Deputy Tahsildar, it could be seen that certain lands, which were registered in their names were fraudulently not shown in the declaration with a view to circumvent the provisions of the Act. Therefore, the Authorized Officer (Land Reforms), Srikakulam requested the lower Appellate Tribunal that certain lands, which were not shown in the report, may be included in the holding of the declarant and computed afresh for fresh determination of surplus holding of the declarant.

19. Despite these facts being brought to the notice of the Court, the appellate authority failed to entertain the review petition on the sole ground of non-application of Rule 16(5)(b) of the Rules. In my considered view, of course, as already pointed out, the lower appellate Tribunal has gone even to the extent of distinguishing the judgments reported in Digambar Rao's case (supra) and Pelleti Gopala Krishna Reddy's case (supra). The simple proposition laid down in those decisions was to the effect that if any order is obtained in a fraudulent manner or by misrepresentation, it can be recalled by the Court at any time. In my opinion, the reasoning of the lower Appellate Tribunal in this regard is unwarranted and unjustifiable. It is to be further seen that there might be cases where the third parties tried to get advantage by defeating the very object of the provisions of the Act by way of filing such review petitions in order to reduce the excess land holdings. Therefore, as and when such a fraud or misrepresentation was brought to the notice of the Court by the competent authority, then it is essential for the Court to investigate into the matter once again and seen whether the averments regarding fraud or misrepresentation are correct or not.

20. For the foregoing reasons, the impugned order of the lower Appellate Court is set aside and the matter is remitted back to the Primary Tribunal to conduct an enquiry afresh into the alleged fraud or misrepresentation, particularly keeping in view of the facts brought to the notice of the Primary Tribunal by the Special Deputy Tahsildar (Land Reforms), as was noticed by the appellate authority, by giving an opportunity of hearing to both the parties. It is needless to mention that after such an enquiry, if any fraud was found on the part of the declarant or his legal representatives or third parties or any other party, appropriate action may be initiated u/s 24 of the Act or under any other provision available under law.

21. The civil revision petitions are accordingly allowed. No costs.