

(1977) 04 AP CK 0019

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2216 of 1976

Kalidindi Lakshminarasaraju

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 20-04-1977

Acts Referred:

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

Citation : AIR 1977 AP 355 : (1977) 2 APLJ 54

Hon'ble Judges : Ramachandra Raju, J; Madhava Rao, J

Bench : Division Bench

Advocate : G.R. Subbarayan, for M. Raja Sekhara Reddy and P. Ramakrishna Raju, for the Appellant; Government Pleader for G.A.D., for the Respondent

Judgement

Ramachandra Raju, J.—This C. R. P. arises u/s 21 of Andhra Pradesh Land Reforms Ceiling on Agricultural Holdings Act, 1973, (hereinafter referred to as the Act). The petitioner is a declarant who filed his declaration as provided u/s 8 of the Act with regard to the land held by him. He has given 25 items of land in the declaration and out of it, for items 19 to 25 he claimed exemption on the ground that they were alienated by him. As the exemption was granted by the Tribunals, we are not now concerned with those items. We are concerned in this revision with items 1 to 18. Out of these items, the Tribunal considered items 15 to 18 of a total extent of Ac. 0-45 cents as "single crop wet land" and items 1 to 14 as "double crop wet lands". The petitioner questions the correctness of the view this taken by the Tribunals.

2. According to the petitioner, items 15 to 18 are registered "dry lands" and the Tribunals went wrong in treating them as "single crop wet lands", and items 1 to 14 should not have been considered by the Tribunals as "double crop wet lands."

3. Admittedly items 15 to 18 were registered as "dry lands" and items 1 to 14 were registered as "wet lands" in the revenue registers of the Government. It is also an admitted fact that items 1 to 14 were included in Schedule B in the Draft Rules published in the Andhra Pradesh Gazette dated 16-7-1962 as per the G. O.

Ms. No. 140 Public Works dated 19-1-62 which is known as Localisation G. O. Admittedly items 15 to 18, though they are registered "dry lands" are included in the Ayacut of a Government source of irrigation and wet crops are raised in them. Therefore it is the contention of the Government that these items though registered as "dry lands" are to be deemed to be wet lands within the meaning of the definition given to "wet land" in Section 3(v) of the Act. With regard to items 1 to 14 the contention of the petitioner is that though they are "wet lands" and also included in the Schedule B, they cannot be treated as double crop wet lands because no dufassal crop has been raised with the use of the water from the Government source of irrigation in any four fasli years within six fasli years in question (Faslis 1378 to 1383) for want of supply of water from the Government source of irrigation.

4. Therefore the two points that arise for consideration are: (1) Whether items 1 to 14 are not "double crop wet lands" and (2) items 19 to 25 are not "dry lands" within the meaning of the provisions of the Act.

5. The expression "double crop wet land", "dry land" and "wet land" are defined respectively under Clause (d), Clause (e) and Clause (v) of Section 3 of the Act. The definitions so far as they are relevant for our purpose may conveniently be extracted here.

"Section 3(d) "double crop wet land" means any wet land registered as double crop or compounded double crop wet land in the land revenue accounts of the Government and includes any wet land not so registered

(i) for which in accordance with any scheme of localisation being adopted under any Government source of irrigation, water is available in both the first and second crop seasons during a fasli year including the lands covered by Schedule B and Part II of Schedule C appended to the draft rules for the irrigation of lands in the Godavari Western, Eastern and Central deltas published in the Rules supplement to Part II Extraordinary of the A. P. Gazette dated 16th July, 1962.

(ii)
.....

(iii)
.....

provided that -

(a) any land entitled to the supply of water from a Government source of irrigation and on which two irrigated crops per fasli year have or a dufassal crop has not been raised with the use of water from such source in any four fasli years within a continuous period of six fasli years immediately before the specified date, for want of supply of water from such source;

(b)
.....

(c) any land to which water has been specifically supplied on a temporary basis for raising a second crop by diversion of water intended for eventual utilisation elsewhere;

(d)

shall not be deemed to be double crop wet land. Section 3(e) "dry land" means land registered as dry, manavari asmantari, baghat or garden land, or special rate dry land in the land revenue accounts of the Government or assessed as such, and includes any other land, excluding wet land;

".....

Section 3(v) "wet land" means land registered as wet, single crop wet, double crop wet, compounded double crop wet or special rate wet land, in the land revenue accounts of the Government or assessed as such; and includes any land not registered as wet which has been

(i) included in the ayacut of any Government source of irrigation;

(ii) irrigated by water from any Government source of irrigation in any four fasli years within a continuous period of six fasli years immediately before the specified date; or

(iii) irrigated by a tube well constructed by the Government or any person;

Provided that any land which has been registered as wet land in the revenue accounts of the Government and on which no irrigation has been raised with the use of water from a Government source of irrigation in any four fasli years within a continuous period of six fasli years immediately before the specified date for want of supply of water from such source shall not be deemed to be wet land."

6. From a reading of the definition of "double crop wet land" as extracted above, it is clear that a wet land becomes double crop wet land if it is registered as double crop or compounded double crop wet land in the land revenue accounts of the Government. Items 1 to 14 admittedly are not of that category. Apart from that category, the wet lands which are included in the Schedule B of the Draft Rules published in the Gazette dated 16-7-1962 referred to above are also double crop wet lands. It is not in dispute that items 1 to 14 are wet lands and they are included in the Schedule B. Therefore, prima facie they are "double crop wet lands". However, it is the case of the petitioner that as per the proviso (a) given in the definition of "double crop wet land" they cannot be treated as double crop wet lands as no doffussal crop has been raised in any four fasli years out of the six fasli years in question for want of supply of water from the Government source of irrigation.

7. In C. R. P. No. 1890 of 1976 in which we have delivered judgment yesterday, we negated the contention that once a land is included in the B schedule it has to be treated as double crop wet land and the cultivation test provided in the proviso (a) of the definition has no application to the lands included in the

Schedule B and though doffusal crop could not be raised in any four fasli years within the six fasli years in question for want of supply of water from the source of Government irrigation, it is still to be treated as double crop wet lands". Therefore, as a matter of fact if no dofussal crop was raised in any four fasli years within the six fasli years of 1378 to 1383 faslis, in items 1 to 14, on account of the want of supply of water in the Government source of irrigation they cannot be treated as double crop wet lands. Unfortunately the Tribunals did not properly consider the evidence on this aspect. The Government must be in a position to show by means of record that during the six fasli years in question whether water was available to lands of the petitioner from the Government source of irrigation for the purpose of raising doffussal crops. Some oral evidence was adduced on behalf of the petitioner. The appellate Tribunal did not even go into that evidence. It is therefore necessary to send back the case to the Appellate Tribunal to go into that matter.

8. The learned counsel for the petitioner has also argued that items 1 to 14 are included both in the B schedule and in the A schedule rotational zone (A schedule also appended to the Draft Rules mentioned above) and since the petitioner has opted for A Schedule rotational zone, they have to be treated as A schedule rotational zone lands only and not B schedule lands. In this connection it is necessary to examine some provisions made in the Draft Rules of the localisation G. O. According to those rules, the first crop season shall be deemed to commence on the date of the annual reopening of the canals and to end with 31st December following. Second crop season commences on the 1st January and end with after the date of the annual closure of the canals when water ceases to flow in the canals and channels. Lands included in the permanent zone may take water for irrigation in the second crop season of every year; lands included in the rotational zones only in the year or years specified as per the turn. It is further provided that no lands not falling either in the permanent or in the rotational zone, shall be irrigated in the second crop season under any circumstances, unless they are included in either Schedule B or Schedule C and lands included in the rotational zones shall not be irrigated in the second crop season during non-turn years. Lands included in Schedule B may take water for irrigation once in ten days in the first and second crop seasons. It is also provided therein that lands included in more than one schedule may take water under the Rules applicable to any of the Schedules in which it is included. Therefore, if items 1 to 14 are included both in the B Schedule and A Schedule rotational zones, they do not cease to be B Schedule lands simply because taking advantage of the fact that they are also included in the A Schedule rotational zone, the petitioner raised second crop in any turn year. If the lands are included both in B Schedule and in a rotational zone of A Schedule they can be cultivated with a second crop in the turn years and also raise "dufassal" crop (crop which lasts during both the seasons, like sugar-cane, betel, plantains, turmeric etc.) (See Standing Orders of the Board of Revenue, Volume I, Chapter I, page 10) in non-turn years. Therefore, we do not find any substance in this argument

submitted by the learned counsel.

9. Coming to items 15 to 18, the question for consideration is whether they are to be treated as "dry lands" only and not as "wet lands", as they are held to be, by the Tribunal. According to the definition, "dry land" means land revenue accounts of the Government or assessed as such and it also includes any other land excluding wet land. According to the definition of "wet land" it means land registered as wet, single crop wet, double crop wet, compounded double crop wet or special rate wet land, in the land revenue accounts of the Government or assessed as such. Apart from these lands, according to the definition "wet land" also includes any land (the streets is ours) not registered as wet, but which has been in the ayacut of any Government source of irrigation. The expression "any land" which is mentioned above takes in dry lands also, as per the definition given to the term "land" u/s 3(j) of the Act. If the definition for "wet land" only is to be taken into consideration there is no difficulty to treat items 15 to 18 as wet land, though they were registered as dry lands in the land revenue accounts of the Government since admittedly they are included in the ayacut of a Government source of irrigation and wet crops are being raised in the same. The argument of the learned counsel for the petitioner is that as per the definition given to the expression "dry land" a land registered in the revenue accounts of the Government as dry land becomes dry land and it cannot again become wet land under the definition given to the expression "wet land". In order to give effect to the true intention of the Legislature in enacting those provisions, the two definitions must be read together to find out a harmonious interpretation of the definitions. If they are read together, it will become immediately clear that a land registered as dry land in the land revenue accounts of the Government also has to be treated as wet land if that dry land included in the ayacut of any Government source of irrigation enabling it to raise wet crops.

10. In this connection it is also necessary to consider the proviso given in the definition to the expression "wet land" u/s 3(v) of the Act and Explanation III to the First Schedule of the Act. According to the proviso any land which has been registered as wet land in the land revenue accounts of the Government and on which no irrigated crop has been raised with the use of water from a Government source of irrigation in any four fasli years within a continuous period of six fasli years immediately before the specified date for want of supply of water from such source, it shall not be deemed to be wet land and if it is not deemed to be wet land it will become dry land according to the definition of "dry land". Therefore, according to this proviso, a land registered in the land revenue accounts of the Government as wet land can also be deemed to be dry land if the conditions laid down there are satisfied. It is provided under Explanation III to the First Schedule that in the case of land registered as dry or wet in the land revenue accounts of the Government and bearing a particular taram or bhaganna, but which is deemed to be wet or dry land respectively under the provisions of the Act, it shall be deemed to bear the same taram or bhaganna which a similar wet or dry land, as the case may be, in the vicinity bears.

Therefore, this provisions also contemplates the possibility of treating under the provisions of the Act a registered dry land as wet land or vice versa.

11. In this connection, the learned counsel has brought to our notice the following decisions: Shankarrao Ramchandrarao Phate and Another Vs. Chatrapal Anandrao Kedar and Others, , The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, and Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd., . We do not think the decision in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, has any application. The interpretation we have given also does not in any way come in conflict with any of the principles laid down in the other two decisions. On the other hand the interpretation we have given to the definition of "wet land" is in accordance with the principles laid down in those decisions.

12. Therefore, there are no merits in the Civil Revision Petition with regard to items 15 to 18 and the revision is dismissed with regard to the same. The revision petition is allowed with regard to items 1 to 14 and the case is sent back to the Appellate Tribunal for disposal afresh in the light of the observations made above after giving an opportunity, if necessary, to the parties to adduce any documentary evidence to show whether water was made available to the lands during the Faslis in question for raising dufassal crop. No costs. Advocate's fee Rs. 100.

13. Petition partly allowed.