

(1977) 07 AP CK 0026
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2056/76

Kura Abbayi Dora

APPELLANT

Vs

The Authorised Officer, Land Reforms Rajahmundry

RESPONDENT

Date of Decision : 18-07-1977

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 1, 21

Constitution of India, 1950 — Article 224(1), 244(1), 245

Citation : (1977) 07 AP CK 0026

Hon'ble Judges : K. Ramachandra Rao, J

Bench : Single Bench

Advocate : M.S.K. Sastry, for the Appellant;

Final Decision : Dismissed

Judgement

K. Ramachandra Rao

1. In this revision petition, filed u/s 21 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, three contentions are raised by Shri M. S.K. Sastry, the learned Counsel for the petitioner: The first contention is that the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 is not applicable to the tribal auras in the East Godavari District in which the lands are situated and that the Land Reforms Tribunal has no jurisdiction to decide the standard holding of the declarant's family unit. The argument of the learned counsel for the petitioner is that under Article 224 (1) read with Clause (5) of the 5th Schedule to the Constitution of India, no Act of the Parliament or the State Legislature applies to a scheduled area unless it is made applicable to the scheduled area by a notification by the Governor. But, I do not think this submission has any merit. Article 244 (1) provides that the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and scheduled Tribes in any State other than the States of Assam and Meghalaya, Clause 5 (1) of the Fifth Schedule, which is relevant for the purpose

of the present case, reads as follows :

Notwithstanding anything in this Constitution, the Governor may by Public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this subparagraph may be given so as to have retrospective effect.

2. From the provisions of Clause 5 (1) it is clear that the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof subject to such exceptions and modifications specified in the notifications. Parliament has power, under the provisions of Article 245 of the Constitution to make laws for the whole or any part of the territory of India, and the Legislature of the State has power to make laws for the whole or part of the State. Sub-section (2) of Section 1 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, states that the Act extends to the whole of the State of Andhra Pradesh. Therefore, said Act applies to the whole of the State of Andhra Pradesh, unless the Governor, in exercise of the power conferred by sub-clause (1) of Clause 5 of the Fifth Schedule to the Constitution, by notification, directs that the said act shall not apply to the scheduled area or part thereof. In the instant case, admittedly, there is no such notification made by the Governor under Clause 5 (1) of the Fifth Schedule to the Constitution. Hence, the Act applies to the whole of the State of Andhra Pradesh including the Scheduled Areas within the State. The learned counsel for the petitioner also conceded that in the absence of such a notification by the Governor, under Clause 5 (1) of the Fifth Schedule to the Constitution, the Act applies to the Scheduled Areas. For the foregoing reasons, the first contention urged on behalf of the petitioner has to be rejected.

3. The second contention urged by Shri M.S.K. Sastry, the learned counsel for petitioner, is that the Tribunal erred in fixing the taram of the land. The learned counsel submits that there being no survey and settlement operations in the scheduled areas, the taram for the land in question should have been fixed after giving notice to the petitioner and that such a procedure was not adopted and, therefore, the taram fixed and classification made by the Tribunal are not correct.

4. In the order of the Additional Revenue Divisional Officer (Land Reforms; Rajahmundry, it is observed as follows :

it is seen from the records available that the lands have all been classified as dry by the Survey Department and that this village has been placed in Group IV for purposes of settlement operations. As there is no taram fixed for the lands the Tahsildar has issued appropriate notice to the landlord for fixation of taram and proposed taram 7 for the lands and class then them under G to the first Schedule to the Act. The declarant has no objection to place the lands held by him under Class G. As there is no appropriate taram fixed for the lands held by him the

Tahsildar proposed the highest taram for the district which is group 1 to 7. The proposal of the Tahsildar to classify these lands under G to the first Schedule to the Act is accepted.

5. A contention was sought to be urged before the Appellate Tribunal on behalf of the petitioner that the computation of the ceiling area by the Land Reforms Tribunal had no basis because no settlement took place in that area and no taram was fixed for the lands in that area. It was contended before the Appellate Tribunal on behalf of the Government that the declarant did not prefer any appeal against the fixation of the taram and classification of the land made by the Tribunal. The Appellate Tribunal found that in fact no appeal was preferred against the fixation of the taram and classification and therefore the declarant was not allowed to agitate that question in appeal. A perusal of the appeal grounds shows that no ground was taken challenging the fixation of the taram and classification of the lands by the Land Reforms Tribunal, and the petitioner had not challenged the order of the Tribunal with regard to the fixation of the taram and classification of the land. I do not think, he could be permitted to agitate the said question at the revisional stage.

6. The last contention urged by the learned counsel for the petitioner is that the petitioner belongs to the scheduled Tribe and is governed by Hindu Law and that his mother Bapanamma would be entitled to a share in the family properties according to Hindu Law and that both the Tribunals erred in not allowing a share to the petitioner's mother.

7. Before the Appellate Tribunal discussion arose as to whether Hindu Law would apply to the Scheduled Tribes. It so, whether they are governed by the Hindu Law unaffected by the Hindu Succession Act which had come into force in 1956, or whether they would be governed by any custom. But, I do not think it necessary to go into that question in this revision petition. Neither in the declaration nor in the deposition before the Tribunal was any plea raised or statement made by the petitioner that his mother would be entitled to a share in the properties declared by him, according to Hindu Law or according to any custom prevailing in the Scheduled Tribe to which he belongs. The mother also did not set up any claim to any share in the properties declared by the declarant. On the other hand, in his deposition, the declarant had clearly stated that he was having Ac. 16, 63 cents of land in Yarlopalli Village and his minor sons were having Acs. 9.68 cents of land. He further stated that the entire land was in his possession and enjoyment. No doubt, he stated that the lands were acquired by his father but he did not say that his mother had any right in the said lands. In the statement before the Verification Officer also he stated that after the death of his father the patta for the lands was transferred in his name and that he had no brothers but his mother Bapanamma, who was alive, was living with him. He further stated that for the lands belonging to him patta was given to him by the Collector. The verification Officer also stated in his verification report that the lands are registered in the name of the declarant. All this material therefore

shows that the declarant alone is in possession and enjoyment of the lands shown in his declaration, and it does not appear that the mother ever asserted any rights to the lands in question. It is therefore difficult to accept the contention of the petitioner that his mother was entitled to a share in the lands declared by him. Even assuming that the petitioner would be governed by Hindu Law, the question whether the mother would be entitled to any rights in the properties of her husband depends upon the date on which her husband died, but the date of the death of the petitioner's father has not been mentioned, anywhere in the record. It is therefore not possible to find out whether the petitioner's mother would be entitled to any right in the properties left by her husband. For all the foregoing reasons. I do not think it possible to uphold the contention of the petitioner that his mother would be entitled to a share in the properties declared by him. All the contentions raised by the petitioner therefore fail and this C.R.P., is dismissed with costs.