(2006) 02 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 21256 of 2003 and 1893 of 2005

M. Laxmi Bai and Others APPELLANT

Vs

Neelam Narsimha and Others RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 2, 47, 50B
Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Rules, 1951 — Rule 3, 4, 4(1), 5, 6
Andhra Pradesh Record of Rights in Land Act, 1971 — Section 4, 5
Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 5A, 9
Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 53A

Citation : (2006) 2 ALD 74 : (2006) 2 ALT 391 : (2006) 1 APLJ 338

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : K. Ashok Reddy, for the Appellant; K. Ravinder Reddy, for die Respondent Nos. 1 to 4 in WP No. 21256 of 2003, Government Pleader, for Revenue for the Respondent Nos. 1 and 2 in WP No. 1893 of 2005 and for the Respondent Nos. 8 and 9 in WP No. 21256 of 2003, V. Venugopal Rao and P. Venugopal, for Respondent No. 10 in WP No. 21256 of 2003, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—Since the questions of law and facts involved in these two writ petitions are common, they were heard together and are being disposed of by this common order.

2. W.P. No.21256 of 2003 is filed against the order dated 18-2-2002 passed by the Joint Collector, Ranga Reddy District, Hyderabad, in case No.D5/7083/2000, whereby and where under the order of the Mandal Revenue Officer in file No.(B)/537/ 89 dated 7-1-1989 incorporating the names of Neelam Narsimha and his brothers Vithalaiah, Laxmaiah and Krishna in respect of Sy.Nos.40, 41, 42, 43, 45, 46, 61, 53, 63, 64, 66, 71 admeasuring an extent of Ac. 14-14 gts. in

Record of Rights register of Kothaguda village, was set aside.

3. W.P. No. 1893 of 2005 is filed against the common order of the Joint Collector dated 21-12-2004 passed in Case Nos.D5/1547/1999 and D5/1237/2001, whereby and whereunder the order of the Revenue Divisional Officer passed in Case No.C/4997/1998 dated 8-2-1999 came to be set aside restoring the order of the Mandal Revenue Officer passed in Proceedings No.B4/537/1989, dated 7-1-1989.

4. The background facts leading to filing of these two writ petitions by the legal representatives of M.Vittal Rao in brief are:

M. Vittal Rao was the pattadar of lands bearing Sy.Nos.40, 41, 42, 43, 45, 46, 61, 53, 63, 64, 66, 71 admeasuring an extent of Ac. 14-14 gts. of Kothaguda village. Neelam Gandaiah claiming to be a purchaser of the said lands under an agreement of sale dated 23-6-1961 filed an application on 31-3-1972 before the Mandal Revenue Officer for regularization of the alienation u/s 50-B of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as ''the Agricultural Lands Act, 1950''). The Mandal Revenue Officer, by proceeding No.B/525/1/85 dated 10-6-1986, issued 50-B certificate. The relevant portion of the order dated 10-6-1986 reads as follows:

As specified under Rule 3 of the Act, Shri Neelam Gandaiah, the petitioner has filed the petition on 31-3-1972 and under Rule 4 Form II and III were issued vide ref. second and third cited and served on the concerned parties, the then Tahsildar, Hyderabad-West was recorded the statement of the vendor Shri M. Vithal Rao on 16th June, 1975 and no objections were received within time stipulated. The vendor has remitted the Tuccavi arrears along with penal interest vide challan Nos.015957 (for Rs.200/-) dated 22-9-1972, 409163 (for Rs.400/-) dated 30-1-1979 and 23106 (for Rs.591-83) dated 16-10-1982 respectively and he was not attracted either by the Agricultural Ceiling Act or Urban Agglomeration Act, and the vendor in his deposition before the then Tahsildar that he has no objection to transfer the same in favour of Shri Neelam Gandaiah and he specified under Rule 4(a)(b), the vendor Shri Neelam Gandaiah has acquired land on 23rd June, 1961 by way of agreement of sale. Under Rule 4(1) of the Act, the entire amount was paid to the vendor by the vendee, and the vendee is in possession and enjoyment of lands in question, since the date of purchase. Under Rule 6 of the Act, the alienee (vendee) has to deposit an amount equal to the registration fee and stamp duty that would have been payable had the transfer been effected by registered document in accordance with the provision of the Indian Registration Act, 1980, 1908.

Accordingly, the alienee has remitted the registration fee and stamp duty vide challan Nos.5859 and 5888 dated 23-4-1986 in State Bank of Hyderabad City Branch.

Since the alienee has completed all the requisite formalities as required in the eyes of law, the certificate form IV (see Rule 8) is issued as shown hereunder:-

This certificate is delayed due to administration reasons or otherwise the certificate ought to have issued long back.

5. Thereafter, Neelam Narsimha, Vithalaiah, Laxmaiah, and Krishna, who are the sons of Neelam Gandaiah, filed an application before the Mandal Revenue Officer for incorporating their names in the Revenue Records under the provisions of Andhra Pradesh Rights in Land and Pattadar Passbook Act, 1971 (hereinafter referred to as ''the Pattadar Passbook Act, 1971). Their application came to be allowed and accordingly proceedings No.(B)537/89 dated 7-1-1989 came to be issued incorporating the names of Neelam Narsaiah and others in Revenue Records commencing from the year 1989. The relevant portion of the order dated 7-1-1989 needs to be noted and it is thus:

Under Sections 4 and 5 of R.O.R. Act, 1971 it is ordered that the name of Sri Neelam Gandaiah ,S/o. Sayanna is deleted and incorporated the name of Shri Neelam Narasaiah, Vitalaiah, Laxmaiah, Krishna against the Sy.Nos.40, 41, 42, 43, 45, 46, 61, 53, 63, 64, 66, 71 extent Ac.14-14 gts of R.O.R. Register of Kothaguda village and necessary changes have carried out in the pahani for the year 1988-89.

6. Aggrieved by the order passed by the Mandal Revenue Officer in File No.(B)537/89 dated 7-1-1989, M.Vittal Rao filed an appeal before the Revenue Divisional Officer, Chevella Division, who took the case on file as C/4997/98. Pending the appeal before the Revenue Divisional Officer, M. Vittal Rao and the sons of Neelarn Gandaiah entered into compromise and accordingly, they filed compromise petition. In pursuance of the compromise, the appeal came to be allowed setting aside the order passed by the Mandal Revenue Officer in proceeding No.(B) 537/89 dated 7-1-1989. The relevant portion of the order dated 8-2-1999 passed by the Revenue Divisional Officer reads as follows:

The respondents have filed compromise petition expressing ''no objection'' to record the name of appellant as owner of subject lands. The compromise memo contents have been read over and explained in their mother tongue to the parties in the open Court. They have admitted the contents as true. They were identified by both the Counsel. The compromise is accordingly recorded. The order of M.R.O. is set aside. The appeal is allowed. The M.R.O. is directed to restore the entries as per rules.

7. Assailing the order passed by the Revenue Divisional Officer in case No.C/4997/98 dated 8-2-1999, two revisions came to be filed before the Joint Collector u/s 9 of the Pattadar Passbook Act, 1971 one by N. Raja Sekhar Reddy and two others (in case No.D5/1547/1999) and Anr. by A. Manohar Prasad (in case No.D5/1237/2001). Both the revisions came to be allowed setting aside the order of the appellate authority dated 8-2-1999 and restoring the order of the original authority dated 7-1-1989. M. Laxmi Bai, M Ravinder Rao and M. Manohar Rao, who are widow and sons respectively of late M. Vithal Rao filed revision before the Joint Collector against the order passed by the Mandal Revenue

Officer vide proceedings No.B/525/1/85 dated 10-64986 whereby and whereunder the Mandal Revenue Officer granted succession based on the compromise entered into between M. Vithal Rao and sons of Gandaiah. The revision came to be dismissed on 18-2-2002. Thus, the legal representatives of M. Vithal Rao filed these two writ petitions questioning the orders of the Joint Collector dated 18-2-2002 and 21-12-2004.

8. Heard the learned Counsel for the parties.

9. The learned Counsel appearing for the petitioners submits that Section 50-B of the Agricultural Lands Act, 1950 is not applicable to the agreement of sale and therefore, grant of certificate under the said provisions in favour of Neelam Gandaiah based on the agreement of sale dated 23-6-1961 is not legal and proper and therefore, the same is liable to be set aside. He would further submit that as on the date of agreement of sale, Section 47 of the Agricultural Lands Act, 1950 was very much in force, and since no permission was obtained from the authority concerned, there would be no validity to the transfer and thus, the Tahsildar would not have considered the application of Neelam Gandaiah for regularization of alienation u/s 50-B of the Agricultural Lands Act, 1950. A further submission has been made by him that mere agreement of sale does not come within the purview of Section 50-B of the Agricultural Lands Act, 1950, which came to be introduced by the Amendment Act 12 of 1969. The amended Act envisages the validation of transactions initially for a certain period and thereafter, the facility of validation was extended from time to time and ultimately upto 31-3-1972. In elaborating this argument, he would submit that as on the date of agreement of sale said to have been executed in favour of Neelam Gandaiah by M. Vithal Rao, the transaction was hit by Section 47 of the Agricultural Lands Act, 1950, since no permission was obtained from the authority concerned for the said transfer, and accordingly, the said agreement of sale is non est in law and unenforceable. In support of his submissions, reliance has been placed on the decisions of this Court in:

1. Konkana Ravinder Goud and Others Vs. Bhavanarishi Co-operative House Building Society and Others,

2. K. Seetharama Reddy and Another Vs. Hassan Ali Khan and Others,

3. Poreddy Ramachandra Reddy v. Abdul Aziz 1968 An.W.R. 391

4. K. Kasulu v. The Commissioner, Endowments Department and Ors. 1986 (2) ALT 44

5. V. Jayachandra Reddy and Ors. v. The Joint Collector and Ors. W.A. No.1812 of 2001 dated 7-2-2005.

10. Learned Counsel appearing for respondents submits that transactions covered under agreement of sale comes within the ambit of Section 50-B of the Agricultural Lands Act, 1950 and therefore, the certificate issued in favour of Neelam Gandaiah is valid. He would contend that the Revisional authority

exercised the jurisdiction both under the Agricultural Lands Act, 1950 and the Pattadar Passbook Act, 1971 and restored the order passed by the original authority. It is also contended by him that the orders impugned in the writ petitions do not suffer from any illegality or impropriety warranting interference of this Court in exercise of powers under Article 226 of the Constitution of India. To buttress his submissions, reliance has been placed on the decision of this Court in K. Chenna Reddy and Anr. v. G. Hanumantha Reddy 1977 (1) ALT 120.

11. The learned Counsel appearing for the petitioners vehemently contends that M. Vithal Rao was not put on notice in the proceedings initiated before the Mandal Revenue Officer for regularization of alienation u/s 50-B of the Agricultural Lands Act, 1950. This Court by order dated 21-12-2005 called for the entire file bearing No.B/525/1/85 dated 10-6-1986. The learned Government Pleader placed on record the entire file relating to the regularization of alienation based on the agreement of sale dated 23-6-1961. The file placed before me contains the application filed by Neelam Gandaiah on 31-3-1972. The file also shows issuance of Form II and III as contemplated under Rule 5 of the Agricultural Lands Act, 1950. It appears the pattadar-M. Vithal Rao made a sworn statement before the authorities confirming the execution of agreement of sale dated 23-6-1961. In the facts and circumstances of the case, I do not see any substance in the contention of the learned Counsel for the petitioners that M, Vithal Rao was not put on notice on the application filed by Neelam Gandaiah for regularization of alienation based on agreement of sale dated 23-6-1961.

12. The core issue in this case is whether alienation based on agreement of sale can be regularized under the provisions of Section 50-B of the Agricultural Lands Act, 1950.

13. The learned Counsel appearing for the petitioners contends that as on the date of agreement of sale dated 23-6-1961, Section 47 of the Agricultural Lands Act, 1950 was in force and as no permission was obtained from the authorities, validation of alienation should not have been made u/s 50-B of the Agricultural Lands Act. This issue is no more res Integra in view of the Division Bench decision of this Court in C.V. Narayan Reddy Vs. Katanguru Raghava Reddy and Another, , wherein it has been held that subsequent to deletion of Section 47 of the Agricultural Lands Act, 1950, it is needless to establish, for the purpose of availing Section 53A of the Transfer of Property Act, that the contracts of sale entered into during the period when Section 47 was in vogue were with permission. Since it stood deleted, it is no more imperative to show that any such permission was obtained, nor the absence would invalidate either the transaction or the possession of the land in the hands of the alienee or transferee.

14. In C.V. Narayan Reddy''s case, there were agreements of sale and pursuant thereto possession of the lands was given in 1960 and the alienees and transferees were enjoying possession of the lands since 1960. The question that has been considered is whether the contracts of sale followed by possession given to alienees or transferees without permission u/s 47 and validation u/s 50-

B of the Agricultural Lands Act, 1950 can be availed for exclusion of land in the holding of the petitioners for the purpose of declaration under the A.P. Land Reforms Act. It has been held therein as follows:

Therefore, we firmly hold that subsequent to deletion of Section 47 of the Tenancy Act, no sanction is at all necessary for the finalisation even with regard to agreements of sale entered into prior to the deletion of Section 47 by way of registration of sale deeds or otherwise. A fortiori, the possession of the lands given in pursuance of agreements of sale is quite valid and lawful and therefore the parties concerned are entitled to avail the provisions of Section 53A of the T.P. Act.

15. The learned Counsel appearing for the petitioners by placing the Division Bench judgments of this Court in Konkana Ravinder Goud and Others Vs. Bhavanarishi Co-operative House Building Society and Others, and in K. Seetharama Reddy and Another Vs. Hassan Ali Khan and Others, , contends that agreement of sale cannot be considered as transfer within the meaning of Section 5A of the Pattadar Passbook Act, 1971.

16. There cannot be any quarrel with regard to proposition of law laid down by this Court in the afore referred case. The cited decision relates to regularization of alienations u/s 5-A of the Pattadar Passbook Act, 1971, but the issue involved in these writ petitions is whether the alienations can be regularized u/s 50-B of the Agricultural Lands Act, 1950. This issue is squarely covered by a Division Bench judgment of this Court in K. Chenna Reddy''s case (supra). It has been held in the cited decision that the agreement of sale with possession would be permanent alienation and therefore, Section 50-B of the Agricultural Lands Act, 1950, automatically applies. The relevant portion of the cited judgment needs to be noted and it is thus:

In the judgment in C.R.P. No.1936 of 1971 Venkatrama Sastry, Justice, did not consider whether Section 47 in terms applies to agreements of sale with possession. The learned Judge without referring to Section 47 has come to the conclusion that a purchaser under an agreement of sale with possession is entitled to a validation certificate as provided u/s 50-B as that Section speaks of an alienation or other transfer of agricultural land where under possession has been given to the alienee. The learned Judge did not further go into the question whether an agreement of sale followed by possession would be a transfer or an alienation.

As we have already discussed above agreements of sale with possession would be "permanent alienations" (the expression used in Section 47) as per the definition of that expression given u/s 2(o) of the Act. If the transaction in question is attracted by Section 47, Section 50-B automatically applies and the respondent would be entitled to a validation certificate as provided u/s 50-B. Therefore, we confirm the view taken by the District Revenue Officer that the respondent is entitled to the validation certificate, but not on the ground as held by him that the document in question is a regular sale deed but on the ground that though it is a mere agreement of sale as it was followed by possession Section 47 of the Act is attracted to it. Accordingly, the CRP is dismissed, but in the circumstances without costs and closed.

17. In view of the decision of the Division Bench of this Court in K. Chenna Reddy''s case (supra), the issue whether the agreement of sale coupled with possession is covered by Section 50-B is no more res Integra. The application filed by Neelam Gandaiah for regularization of alienation based on agreement of sale speaks of his possession over the land. The competent authority, after following the due procedure established under law issued the proceedings dated 10-6-1986 regularizing the alienation. Therefore, I find that the orders impugned in these writ petitions do not suffer from any illegality or impropriety warranting interference of this Court in exercising the powers under Article 226 of the Constitution of India.

18. In the result, both the writ petitions are devoid of merits and accordingly, they are thereby dismissed. No order as to costs.

