

(1976) 08 AP CK 0026

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 650 of 1976

Madala Chittemma and Another

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 27-08-1976

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 10, 12, 3

Citation : AIR 1976 AP 423 : (1976) 2 AnWR 384

Hon'ble Judges : Ramachandra Raju, J

Bench : Single Bench

Advocate : E. Ayyapu Reddy, for the Appellant; Government Pleader for G.A.D, for the Respondent

Judgement

Ramachandra Raju, J.—The Civil Revision Petition is filed u/s 21 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act , 1973 (hereinafter referred to as "the Act"). The first petitioner is the mother and the second petitioner is her son. They are living separately. They filed separate declaration with regard to their holdings of agricultural land as provided u/s 8 of the Act. One Venaiah was the husband of the first petitioner and the father of the second petitioner. He executed a registered settlement deed dated 15-9-1957 under which he gave life interest to the first petitioner and vested remainder right to the second petitioner in respect of a land of an extent of Ac. 37-85 cents computed as 1.1207 standard holdings. This is the land which is now in possession and enjoyment of the first petitioner for which she filed the declaration. The second petitioner filed his declaration for Ac. 50-51 cents of land computed at 1.0030 standard holdings excluding the land for which the first petitioner filed her declaration and in which he has only a vested remainder right. Those facts are not in dispute.

2. The Land Reforms Tribunal, Nuzvid, treating the mother and the son as one family unit and the lands in their separate possession and enjoyment as one

holding, computed the holding at 2.1237 standard holdings and ordered, 1.1237 standard holdings to be surrendered. On appeal by both the petitioners, the Land Reforms Appellate Tribunal, Krishna District has rightly agreed with the petitioner that each of them should be treated as an individual and not as constituting one family unit and each of them is entitled to have one standard holding and ordered the mother to surrender 0.1207 standard holdings from out of 1.1207 standard holdings of land in her possession. But in the holding of the son by including the entire land of Ac. 37.85 cents namely, 1.1207 standard holdings of land which is now in possession and enjoyment of the mother and over which the son has a vested remainder right only without any present right for possession and enjoyment (his right for possession and enjoyment would come into existence only after the lifetime of his mother if he were to be alive by then) computed his holding at 2.1237 standard holdings (1.0030 standard holdings in his possession and 1.1207 standard holdings of his mother's land) and came to the conclusion that he should surrender 1.1237 standard holdings and ordered him to surrender the entire extent of Ac. 50-51 cents of land as computed at 1.0030 standard holdings which is held by him now and which could be even less than the extent of 1.1237 standard holdings which is found to be in excess with regard to his holding as mentioned above.

3. The Land Reforms Appellate Tribunal based its conclusion for including in the holding of the son the entire land held by the mother and not merely the excess land which would revert to him as per provision contained in Section 12 of the Act, on the explanation to Section 3 (i) of the Act which is the definition given for the term "holding". The question for consideration is whether the entire land held by the mother and not merely the excess land in her possession which alone would revert to the son as provided u/s 12 of the Act is to be included in the holding of the son.

4. It is convenient to extract here the definition of the term "holding".

3. (i) "holding" means the entire land held by a person---

(i) as an owner;

(ii) as a limited owner;

(iii) as an usufructuary mortgagee;

(iv) as a tenant;

(v) who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise, or in one or more of such capacities, and the expression "to hold land" shall be construed accordingly.

Explanation: Where the same land is held by one person in one capacity by another person in any other capacity, such land shall be included in the holding of both such persons;"

5. It is also necessary to refer to the definition of the term "owner" as defined u/s 3 (n) of the Act so far it is relevant for our purpose

"" owner" includes a person by whom or in whose favour a trust is created and a person entitled to a vested remainder; but does not include a limited owner."

6. The other relevant provision of the Act which also has a bearing on the question involved and which the Tribunal failed to notice is Section 12 of the Act. It is also necessary to extract that provision here in extenso.

"(1) Where any land is surrendered or is deemed to have been surrendered under this Act by any usufructuary mortgage or tenant, the possession of such land shall subject to such rules as may be prescribed revert to the owner.

(2) The owner to whom the possession of the land reverts under sub-section (1) from an usufructuary mortgagee shall be liable to pay the mortgage money due to the usufructuary mortgagee in respect of that land with interest at the rate of six per cent per annum from the date of such reversion and the said land shall continue to be the security for such payment.

(3) The owner to whom the possession of the land reverts under sub-section (1) from a tenant shall be entitled to receive from the tenant rent due for the period ending with the last cross-objections harvested by such tenant.

(4) Where any land is surrendered or is deemed to have been surrendered under this Act by any limited owner or by any person in possession by virtue of a mortgage by conditional sale or through a part performance of contract for sale or otherwise, the possession of such land shall, subject to such rules as may be prescribed, revert to the owner.

(5) The owner to whom the possession of the land reverts under sub-section (4) shall be liable to discharge the claim enforceable against the land by the limited owner or person in possession ; and the land surrendered shall, if held as a security, continue, to be the security.

(6) Notwithstanding anything contained in this section, where any land surrendered by an usufructuary mortgagee or a tenant or a limited owner or a person in possession referred to in sub-section (4) is also a land surrendered by the owner, the provisions of Section 11 shall apply."

7. By a reading of Section 12 of the Act as extracted above, it is clear that if any person is holding any land not as owner within the meaning of the definition u/s 3 (n) of the Act which is extracted above but as a person having some right in it entitling him to present possession and enjoyment if the land in his possession is found to be in excess of a ceiling area the excess land which is surrendered or deemed to have been surrendered as provided u/s 10 of the Act will not straightway, vest to the Government as provided u/s 11 of the Act but revert to the owner and it forms part of his holding and with the inclusion of that land in his holding if his holding is found to be in excess of the ceiling area he will be

obliged to surrender the excess land and then it would vest in the Government. That is what is meant by Section 12 of the Act.

8. Applying the provisions contained in Section 12 of the Act to the facts of the present case when the mother was holding land computed at 1.237 standard holdings she has to surrender the excess land over and above one standard holdings viz. 0.1237 standard holdings, which is the ceiling area, she being an individual and it will revert to the owner viz., her son and this will be added to the land held by the son already which is computed at 1.0030 standard holdings and putting together both the extents the holding of the son would come to 1.1237 standard holdings in which case he is liable to surrender only 0.1237 standard holdings. This is how the submission was made by Sri Ayyapu Reddy, the learned counsel for the petitioners.

9. But the learned Government pleader has argued that the view taken by the Land Reforms Appellate Tribunal in adding together the entire land in possession of the mother and the land in the possession of the son for computing the holding of the son is correct having regard to the explanation to the definition of the term "holding" given u/s 3 (i) of the Act. A mere reading of the explanation without taking into consideration the other provisions of the Act may lead one to have the impression that the view taken by the Land Reforms Appellate Tribunal is what was meant by the Legislature in adding the explanation to the definition. But the explanation is to be read along with the other provisions of the Act to find its true intended meaning. As already discussed above from the provisions of Section 12 of the Act it is very clear that the excess land in possession of any limited owner which is surrendered or deemed to have surrendered will revert to the owner and does not vest in the Government. There is no question of any land in possession of a limited owner and surrendered or deemed to have been surrendered vesting in the Government straightway. There is no provision made in the Act for vesting of a limited right or a vested right in the Government.

10. As provided u/s 8 of the Act a person is obliged to file his declaration only with regard to his holding. We have already seen above the definition of the term "holding". As per the definition the term "holding" means the entire land held by a person. A person can be said to be holding a property only when he is in actual possession of it. Without a right to present possession a person cannot be said to be holding a property. In the present case out of the land of 1.1207 standard holdings of his mother the son can be said to have a present right to possession, only the excess land 0.1237 standard holdings which would revert to him as per Section 12 of the Act and not also the other land of one standard holding which the mother is entitled to continue to hold.

11. The dictionary meaning of the word "hold" is given to keep fast; to grasp to contain to possess, to occupy etc. It is not possible to say that the land which the first petitioner namely, the mother is allowed to keep even as limited owner to the extent of one standard holding cannot be said to have been held by the son who has only a vested right in it which will materialize only after the death of his

mother and in which he has no right for present possession.

12. A limited owner and a vested remainder right holder cannot possess the property at the same time. It is not possible to say that both of them have been holding the land within the definition of the term "holding" as defined u/s 3 (1) of the Act. It is not possible, therefore, to treat the same land as part of the more than one holding at the same time. That it is so is clear from the Scheme of the Act, and intendment of the Legislature as evident from the several provisions contained in the Act.

13. The expression "standard holding" is defined u/s 3 (a) of the Act as the extent of land specified in Section 5 of the Act. Having regard to the various classes of lands, provision is made in Section 5 of the Act and the table in it as to how a standard holding is to be computed. In Section 4 of the Act ceiling area is defined with regard to various classes of persons. It is equivalent to one "standard holding" in the case of an individual. It is provided u/s 9 of the Act that the tribunal shall on receipt of the declaration as provided u/s 8 of the Act and after making an enquiry pass order determining whether the person holds on the notified date an extent of land in excess of the ceiling area and if so the extent of land so held in excess as on that date. It is provided u/s 10 of the Act that if the extent of the holding of a person is in excess of the ceiling area the person is liable to surrender the land held in excess. Provision is made u/s 11 of the Act for vesting in the Government the land surrendered or deemed to have been surrendered as mentioned in Section of the act.

14 From the above provisions of the Act it is clear that a person is entitled to hold land equivalent to a ceiling area. It is only when any person is holding land in excess of the ceiling area, he is required to surrender the excess extent. If the interpretation to the explanation of the definition of the term "holding" as mentioned in Section 3 (i) of the Act is to be accepted as it was put by the Tribunal many anomalous situations would arise. The one patent example of an anomalous situation is the one we have in the present case. While the intendment of the Act is to allow every person to hold land of an extent equivalent to a ceiling area the interpretation put by the Tribunal had led to the result of the son being obliged to surrender the entire land which he is in possession of leaving nothing for himself. That certainly would not have been the intention of the Legislature in enacting the explanation of the definition of the term "holding". What the Legislature must have really meant in adding the explanation "that where the same and is held by one person in one capacity and by another person in another capacity such land shall be included in the holding of both such persons" appears to be that in the case of category of persons mentioned in the definition, the land should be included in the holdings of the persons mentioned therein in the first instance and when there is excess and surrender by them the excess over and above the ceiling area and it reverts to the owner as provided u/s 12 of the Act the excess should then be included in the holding of the owner. In that view only the Legislature must have enacted the

explanation when it is said such land shall be included in the holdings of both the persons. The explanation does not say that the land shall be included in the holdings of both the persons simultaneously. The Legislature must have added that explanation perhaps with a view to meet a probable argument that if a land is once held to be part of the holding of one person it cannot again be treated as part of the holding of another person even in cases to which Section 12 of the Act would apply. Reading the explanation and the provision contained in Section 12 of the Act together the interpretation and meaning as mentioned above alone are possible to be given to the explanation. It is an accepted principle of interpretation of statutes that where two interpretations are possible with regard to a provision of law that interpretation which is more consistent and not repugnant with the other provisions of the Act should be given and an attempt should be made to concile as far as possible the various provisions of the Act. It appears clear that it is not the intention of the Legislature to deprive any person from holding any land which is within the ceiling area. The Legislature has taken only certain precautions by making provision in Section 7 of the Act for excluding fictitious or benami transactions, made subsequent to 24-1-1971 with a view to avoid or defeat the objects of any law relating to a reduction in the ceiling on agricultural holdings. If really the Legislature intended to take into consideration vested right which a person has in a land in computing his holding it would have mentioned so in Section 5 of the Act where provision is made for computing a "holding". While Section 5 of the Act, no mention is made about a vested right. Section 5 of the Act also mentions for compulsion only such land as is held by a person which means land possessed by a person at present and not having only a future right to it without any right to present possession. As provided u/s 11 of the Act the Revenue Divisional Officer by an order may take possession of the land vested in the Government. Therefore the Revenue Divisional Officer must be capable of taking possession of the land from the person who surrendered it. This also shows there cannot be any surrender of land in which a person has only a vested right and not a right to present possession. All these provisions make it abundantly clear that it does not appear to be the intention of the Legislature that the land in which a person has a vested right only without any right to present possession is to be included in his holding for the purpose of the ceiling area.

15. The learned Government pleader has brought to my notice a decision of this Court i . Laxminarasimham v. State of Andhra Pradesh (1969) I AnWR 119 rendered under Andhra Pradesh Ceiling on Agricultural Holding Act, 1971 wherein it is held that merely because the owner is not in possession of the lands such lands cannot be excluded from his holding for the purpose of the Ceiling Act as long as he continued to be the owner of such lands. There the definition of the term "holding" is not similar to the one in Section 12 of the present Act. Not only that there when a purchaser under an invalid agreement of sale was in possession the question arose whether that land should be included in the holding of the owner. As provided u/s 47 of the Andhra Pradesh Tenancy and

Agricultural Lands Act permission was necessary from the Tahsildar for any alienation. There was no permission there. It was under these circumstances the learned Judge, Vaidya, J, held that the agreement should be included in the holding of the owner. The facts of that case have no application here.

16. Accordingly I hold that the land in which a person has only a vested right and which is in possession of a limited owner cannot be included in his holding upto the ceiling area which the limited holder is entitled to hold and it is only the land found in possession of the limited owner over and above the excess of the ceiling area that can be included in the holding of the person having the vested right.

17. Therefore I hold only the land of an extent of 0-1207 standard holding which is found to be in excess out of the land in possession of the mother that can be added to the land in possession of the son, computed at 1.0030 standard holdings. If that is so the land that can be said to have been held by the son would be 1.1237 standard holdings and he will be obliged to surrender 0.1237 standard holding only keeping for himself one standard holding. It means that the mother should be asked in the first instance to surrender the excess land in her possession. Thereafter the son should be asked which land he wants to retain out of the land surrendered by his mother and the land in his possession towards his one standard holding and to surrender the rest.

18. Accordingly the Civil Revision Petition is allowed as mentioned above but without costs. Advocate's fee Rs. 100.

19. Revision petition allowed.