

(1994) 07 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14494 of 1990

Maganti Seetharavamma

APPELLANT

Vs

Additional Revenue Divisional Officer (Land Reforms), Bandar
and others

RESPONDENT

Date of Decision : 14-07-1994

Acts Referred:

Andhra Pradesh Agricultural Lands (Ceiling on Agricultural Holdings) Act, 1973 —
Section 6
Constitution of India, 1950 — Article 226

Citation : AIR 1994 AP 366

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : Mr. B. Adinarayana Rao, for R. Manohar and Mr. M. Chandrasekhara Rao, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1.This writ petition questions the action in seeking to re-open an order passed by the Land Reforms Tribunal, Bhandar in a proceeding arising under Andhra Pradesh Agricultural Lands (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as A.P. Act, No. 1 of 1973) A.P. Act No. 1 of 1973 came into operation on 1-1-1975. Mr. Maganti Venkatasubbaih was the owner of an extent of Ac. 70-56 cents of land. He was issueless. He died on 6-11-1974 leaving his wife, Ms. Maganti Seethara vamma, the petitioner herein. On the adven of the provisions of A.P. Act No. 1 of 1973 from 1-1-1975, the petitioner had filed declaration. It was pleaded in that case before the above Tribunal that Ac. 36-18 cents of land was bequeathed under Will dated 25-10-1974 in favour of the petitioner while the rest of the land was bequeathed to her brother ant children and that consequent to the death of M. Venkatasubbayya on 6-11-1974, the Will came into operation. The Will was put to scrutiny in the enquiry conducted by the above Tribunal and the validity of the same was upheld. Computation was made accordingly and Ac. 36-J8 cents was computed to the holding of the petitioner and she was held excess by a little extent of land which

she had surrendered. With regard to the balance of land, it was held to be non-excess as it was held by more than one person. The said order dated 27-6-1978 had become final as no appeal was preferred against the said order.

2. After a lapse of 12 years, the Authorised Officer filed an application dated 22-8-1990 stating that the Will was not genuine and, seeking to re-open the matter and to make a re-enquiry alleging that the order dated 27-6-1978 passed by the Tribunal was obtained by playing fraud and misrepresentation to circumvent the ceiling law. This is impugned in this writ petition on the ground that there is no power of review.

3. The learned counsel for the petitioner submits that since there is no power of review, initiation of proceedings before the Tribunal are without jurisdiction and submits that the same should be interdicted by issue of a Writ of Prohibition. The learned counsel for the respondent 4 to 48 who got themselves impleaded submits that even though there is no power of review under the statute i.e. A. P. Act No. 1 of 1973, as there is a fraud committed with regard to the projection of the Will dated 25-10-1974, the fraud unravels everything and as such, the re-opening of the case is warranted. For this proposition, Mr. Chandrasekhar Rao relies upon the decision on P. Satyanarayana Vs. The Land Reforms Tribunal and Others, . Particularly, he relies upon para 13 which reads (at page 153):

"On a conspectus of a case law, it becomes site evident that a Court or Tribunal cannot review its own order or judgment unless there is a statutory provision providing for the same. However, a Court or Tribunal has inherent powers to recall orders obtained by practising fraud on it. There is no question of the Court becoming functus officio, because it retains the jurisdiction to recall such orders. It (sic)heres in a Court or Tribunal to review by recalling the orders on grounds of fraud, misrepresentation or other similar grounds We, therefore, reiterate that a Court or Tribunal can review its own order or judgment only where the party, by way of misrepresentation, has played fraud upon the Court and not in other cases."

Here is a case where the Will was projected and the witnesses were examined. It is not an ex parte order as it was in the presence of all the parties i.e. the declarant's side, the governmental side (through Authorised Officer) and also on the objectors' side. On evaluation of the entire material before the Tribunal, the judgment was rendered upholding the validity of the Will. As the same was not appeal against, it had become final. Now, the said order is sought to be recalled on the very same ground stating that the Will was a fabricated one. It is not as if this Will was not projected or some other fraud was played. The Will was projected as being valid and after making a careful scrutiny, the same was held to be valid and the question of playing fraud or misrepresentation on the part of the petitioner or other legalees did not arise at all. In fact, P.A. Chowdhary, S. (as he then was) in P. G. Krishna Reddy v. Land Reforms Tribunal, 1987(1) ALT778 had held in similar circumstances that the power of review cannot be availed of. This judgment was assailed by the Government in W.A. No. 115 of

1987 and that came up before a Division Bench comprising of justice Lingaraj Rath and myself and by order dated 20-6-1994, we upheld the above judgment of Justice P.A. Chowdhary. This case is no different than the above ease which we have affirmed and is applicable on all fours.

4. It is a settled law that the Court or Tribunal has got inherent power to recall any order passed by it, if it is proved to its satisfaction that a fraud or misrepresentation was played and the order was obtained in consequence of the same. That may apply in case of suppression of material facts which have got bearing on the adjudication of the matter. But, in this case, there is no suppression. The Will deed was produced and adduction of proof by oral evidence was made to prove the Will. There were objectors disputing the Will and evidence was adduced on either side. After making scrutiny of the evidence, both oral and documentary, a judgment was rendered. As such, it cannot be said that any fraud or misrepresentation was played to obtain the order.

5. In the circumstances, I uphold the contention of the petitioner and issue a Writ of Prohibition as sought for interdicting the 1st respondent from proceeding further in C.C. No.598/Nandigama/75. The Writ petition is allowed. No costs.

6. Petition allowed.