

(1997) 08 AP CK 0075

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 3130 and 3401 of 1994

Merla (Bolla) Jogayamma and Another

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 23, 9

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 16(7)

Citation : (1997) 5 ALT 1

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Advocate : Eranki Subba Rao, for the Appellant; G.P. for Land Ceiling, for the Respondent

Final Decision : Dismissed

Judgement

R. Bayapu Reddy, J.—These two revisions are filed by the petitioners therein questioning the respective orders of the Land Reforms Appellate Tribunal, Kakinada, by which the plea of the petitioners, who are the declarants, for exclusion of certain lands from their holdings during the surrender proceedings was rejected.

2. The revision petitioner in C.R.P. 3401/94 is the declarant in L.C.C. No. 913/KDA/75. After due enquiry, the primary tribunal by its orders dated 25-3-1985 finally determined that the declarant is surplus holder and issued notice in Form No. VI directing her to surrender the excess land which was determined at 0.2363 standard holdings. The declarant accepted the said orders and proposed to surrender the land bearing Sy. No. 201 of Gandepalli village. After publishing notice in Form No. VIII calling for objections and after obtaining the suitability report, the primary tribunal accepted the surrender of the said land by orders dated 3-5-1989 and directed the concerned officer to take possession of the land from the declarant. Thereupon, notice in Form No. IX was issued to the declarant

by the Revenue Divisional Officer, Peddapuram requiring her to deliver possession of the above said land which she had proposed to surrender towards her excess holding. Aggrieved by such notice, the alleged tenants of the said land filed appeal in L.R.A. No. 105/93 before the Land Reforms Appellate Tribunal, Kakinada, contending that they are entitled for tenancy rights in the said land. The declarant was shown as the second respondent in that appeal. During the pendency of the appeal, the declarant filed LA. No. 1070/93 under Rule 16(7) of the Land Reforms Rules framed under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short "the act") for exclusion of the above said land in Sy. No. 201 from her holding on the ground that the said land was already donated by her grand-father Venkanna to A.P. Bhoodan Yagna Board on 7-8-1964; that on account of ignorance on her part, she showed the said land also in her declaration; that recently a notification u/s 15(4) as well as u/s 15(2) of A.P. Bhoodan & Gramdan Act, 1965 is published in the Gazette on 11-11-1993; that in view of such publication in the Gazette the above said land has to be excluded from her holding as per Section 23(g) of the A.P. Land Reforms Act and that, therefore, the said land may be excluded from her holding. The appellate tribunal, however, rejected such contention on the ground that the orders passed by the primary tribunal as well as the appellate tribunal fixing up the excess holding of the declarant had already become final and the above said land was also surrendered by the declarant towards her excess holding; that the present request of the declarant made during the surrender proceedings cannot be accepted for excluding any land from her holding and that, therefore, I.A. 1070/93 filed by her was liable to be dismissed. The declarant had also filed LA. 1069/93 before the appellate tribunal for receiving the memo issued by the Government and the Gazette notification by way of additional evidence. Both the said petitions were dismissed by the appellate tribunal. The present revision in C.R.P. 3401/94 is filed by the declarant questioning the above said orders of the Land Reforms Appellate Tribunal dated 16-6-94 passed in I.A. 1069/93 and LA. 1070/93 in L.R.A. No. 105/93.

3. C.R.P. No. 3130/94 is filed by the declarant in L.R.A. 101/93 on the file of the Land Reforms Appellate Tribunal, Kakinada questioning the orders dated 15-6-1994. The revision petitioner herein is the son of one Bangaraiah who was the declarant in L.C.C. No. 780/KDA/75. The primary tribunal by its orders dated 19-11-1989 finally determined that the declarant is holding land equivalent to 0.0500 Standard Holdings in excess and the said orders had become final. As the declarant failed to propose the land of his choice for surrender, the primary tribunal issued notice u/s 10(4) of the Act on 7-10-1992 informing him that the land bearing Sy . No. 492/ 2 of G. Medapadu village belonging to him is provisionally selected for surrender towards the excess holding and he can file his objections if any for such proposal. As no objections were received from the declarant as well as from any third parties to Form No. VIII notice and after receiving suitability report from the concerned officer, the primary tribunal passed the orders dated 14-6-1993 selecting the above said land in Sy. No.

492/2 towards the land to be surrendered by the declarant towards his excess holding. As the declarant died in the mean while, his son, who is the present revision petitioner, thereupon filed the appeal before the Land Reforms Appellate Tribunal questioning such orders passed by the primary tribunal. Subsequently, during the pendency of the appeal, the appellant got the grounds of appeal amended by raising the plea that an extent of Ac. 1.00 in Sy. No. 496/3 in G. Medapadu village belonging to him has to be excluded from his holding as per Section 23(g) of the Act as it was donated to Bhoodan Yagna Board on 6-8-1964; that the required notification was published by the State Government in the Gazette dated 11-11-93 about the said donation made to Bhoodan Yagna Board and that in view of such notification, the above said land donated to Bhoodan Yagna Board has to be excluded from his holding. The Land Reforms Appellate Tribunal however, rejected such plea of the appellant on the same ground that such plea cannot be raised during the surrender proceedings as the orders passed by the tribunals regarding the excess holding of the land had already become final. Aggrieved by such orders dated 15-6-1994 passed by the appellate tribunal C.R.P. 3130/94 is filed by the appellant in L.R.A. 101/93.

4. As the point involved for consideration in both the revision petitions is the same, they are heard together and are being disposed of by this common order.

5. The point for consideration in the present revisions is whether the plea of the revision petitioners made during the surrender proceedings for exclusion of the lands from their holdings is maintainable and whether there are any valid reasons to interfere with the impugned orders passed by the Appellate Tribunal?

6. It is seen from the facts of the two cases and it is also not disputed by the learned counsel for the revision petitioners that in both the cases orders passed u/s 9 of the Land Reforms Act determining the excess holdings of the declarants have become final and that the revision petitioners, who are the declarants, did not seek exclusion of the concerned lands from their holdings during the course of enquiry regarding the extent of their holdings before the final orders determining their excess holdings were passed by the Tribunals. It is also to be seen that in the case of the petitioner in C.R.P. No. 3401/94 the declarant himself proposed to surrender the land in Sy. No. 201 towards his excess holding and such proposal was accepted by the Land Reforms Tribunal and Form No. VIII notice was also published calling for objections and as no such objections were received from any quarters, the Land Reforms Tribunal accepted the proposal for surrender of the above said land by orders dated 3-5-1989 and directed the concerned officials to take possession of the same. The impugned notice in Form No. IX was accordingly issued to the revision petitioner, who is the declarant, by the Revenue Divisional Officer to deliver possession of the said land. Questioning such notice, the third parties, who are alleged to be the tenants of the said land which is proposed for surrender, filed the appeal and it is only during the pendency of the hearing of the said appeal that the revision petitioner, who was shown as second respondent in the appeal, came up with the present plea that

the above said land in Sy. No. 201 shall be excluded on the ground that the said land was already donated to A.P. Bhoodan Yagna Board and that the said land shall, therefore, be excluded from his holding u/s 23(g) of the A.P. Land Reforms Act inasmuch as the Government has published the above said donation in the Gazette dated 11-11-1993. In the other case concerned in C.R.P.NO. 3130/94 also the Land Reforms Tribunal has passed the orders u/s 9 of the Land Reforms Act determining the surplus holding of the declarant, who is the father of the present revision petitioner, at 0.0500 Standard holdings and as the declarant failed to propose the land of his choice, the Land Reforms Tribunal issued notice in Form No. VIII informing the declarant that the land bearing Sy. No. 492.2 belonging to him was provisionally selected for surrender. The declarant did not raise any objection for such proposal. In view of such circumstances, the Land Reforms Tribunal passed the orders selecting the above said land in Sy. No. 492/2 for surrender towards the excess holding of the declarant. At that stage, the present revision petitioner, who is the son of the declarant, filed the appeal in L.R.A. No. 101/93. It is only during the pendency of the said appeal the present plea was raised by the revision petitioner for exclusion of his land of an extent of Ac. 1.00 in Sy. No. 496/3 on the ground that it was already donated to the Bhoodan Yagna Board in the year 1964; that the Government has issued the required gazette notification only recently in 1993 and that in view of such Gazette notification, the above said land in Sy. No. 496/3 shall be excluded from his holding under the provisions of Section 23(g) of the Act. It is clear from such facts and circumstances, that the orders passed by the concerned Tribunals u/s 9 of the Land Reforms Act determining the excess holdings of the petitioners in both the cases had become final and the declarants did not seek exclusion of the present lands in dispute from their holdings on the ground that the said lands were already donated to Bhoodan Yagna Board. It is also clear from the facts of these cases that surrender proceedings were also initiated and the lands to be surrendered by the declarants in both the cases towards their excess holdings were also identified and steps were initiated for taking possession of such lands by way of surrender towards their excess holdings. Inasmuch as the orders determining the excess holdings of both the declarants had already become final, it is not open to the declarants to raise the plea under Rule 16(7) of the Act (sic. Rules) for exclusion of any land from their holdings during the course of the surrender proceedings which were already initiated by the concerned authorities under the Act. In view of such facts and circumstances and in view of the observations made by a Division Bench of this Court in the decision reported in Laxama Reddy and Others Vs. The State of A.P., the Appellate Tribunal rejected the claim of both the revision petitioners for exclusion of the concerned lands from their holdings. There is no irregularity or illegality in such orders passed by the Appellate Tribunal.

7. The contention of the learned counsel for the revision petitioners, however, is that the concerned lands in both the cases were donated to A.P. Bhoodan Yagna Board as long back as in 1964, which is long prior to the filing of the declarations

under the Act; that u/s 23 (g) of the A.P. Land Reforms Act the land donated to A.P. Bhoodan Yagna Board will be excluded from the holding of the donor only when the required Gazette notification is made by the Government in the Gazette u/s 15(4) of the A.P. Bhoodan & Gramdan Act, 1965; and that the required notification under the A.P. Gazette was made only on 11-11-1993; that in view of such notification and in view of Memo No. 2408 Revenue (G) Department dated 20-6-1975, the lands in dispute in the present cases have to be excluded from the holdings of the declarants as the vesting of the above said lands in the A.P. Bhoodan Yagna Board will become effective from the dates of donation which are in the year 1964; that such Gazette notification was not available to the declarants at the time when they filed the declarations or at the time when the Tribunals under the Act passed the final orders determining the excess holdings of the declarants and that inasmuch as such Gazette notification was made only in the year 1993, the declarants have chosen to raise such plea for exclusion of those lands from their holdings when the surrender proceedings were pending and that, therefore, their claims for exclusion of the lands from their holdings are bonafide and have to be considered by the Court. But such contention cannot be accepted. It is no doubt true that the above said Gazette notification, on the basis of which the revision petitioners are now seeking exclusion of the concerned lands from their holdings, was issued only on 11-11-1993 and that such notification was not there when the declarations were made and when the final orders were passed by the Tribunal determining the standard holdings of the declarants. But that itself is not a ground for raising the plea for exclusion of the lands from the holdings of the declarants when the final orders u/s 9 of the Act were already passed and when the surrender proceedings were already initiated. This view is clear from the above cited Division Bench decision of this Court reported in Laxma Reddy v. State of A.P. (1 supra). After referring to the earlier decisions of this Court and after considering the relevant provisions of the A.P. Land Reforms Act, it was observed by the Division Bench in the said decision in para 20 as follows:

"When once the holding of the declarant was fixed, it is not open for him to reagitate the same matter in another front namely in the surrender proceedings. The surrender proceedings are covered by Section 10 of the Act and the Rules framed there under and anything over and above the same can never be considered in the surrender proceedings."

It is further observed by the Division Bench in Para 22:

"It is common knowledge that finality has to be attached to the judicial proceedings at every stage unless the finding is challenged in the appropriate forum. When the holding of the declarant was decided and when the said order was permitted to become final, it is not known as to how the same can be questioned in surrender proceedings and surrender proceedings shall be restricted only to the points that are permitted to be raised in the said proceedings. During the surrender proceedings also if the correctness or

otherwise of the fixation of the holding of the declarant was permitted to question, there can never be any end or finality to the proceedings determining the holding of the declarant."

8. In another decision of this Court reported in *Government of A.P. v. Veeranna*, 1980 (2) APLJ 25 = 1980(1) ALT 53 (NRC), it is held that when once the order passed u/s 9 of the A.P. Land Reforms Act becomes final, the person holding the land in excess of the ceiling area is liable to surrender the land held in excess as laid down in Section 10 of the Act; that at that stage, there is no provision for again revising the order passed u/s 9 of the Act which has become final; that what can be considered in the proceedings u/s 10 or in the appeal or revision against the orders passed u/s 10 is whether the surrender is in accordance with the final order passed u/s 9 and whether the surrender of any land is improperly rejected and whether the Tribunal was justified in directing some other land to be surrendered than the one offered by the declarant. It is further observed in that decision that the proceedings u/s 10 are more or less in the nature of execution in which the correctness of the earlier order under Section 9 cannot be canvassed and that the limited questions mentioned in Section 10 alone are required to be considered in the proceedings u/s 10 of the Act: The same view was expressed by this Court in an unreported decision in C.R.P. No. 82 of 1980 dated 18-9-1981 also, in which it is observed that where the order passed u/s 9 of the Act by the Primary Tribunal has become final and where the appeal against the proceedings u/s 10 of the Act are pending, the Appellate Tribunal where such appeal is pending against the proceedings u/s 10 of the Act, cannot go behind the orders of the primary Tribunal passed u/s 9 of the Act and exclude some lands from the holdings of the declarant as the proceedings u/s 10 are only in the nature of execution proceedings. Therefore, in the present case also, inasmuch as the orders of the Tribunals finally determining the holdings of the present revision petitioners have become final, it is not open to them to come up with the plea during the surrender proceedings for exclusion of some lands from their holdings in spite of the fact that the relevant G.O. was issued only at a subsequent stage.

9. The learned Counsel for the revision petitioners has also tried to rely upon the unreported decisions of this Court in C.R.P. No. 3334/89 dated 1-7-92, C.R.P. 3708/90 dated 16-4-93 and C.R.P. No. 2852/82 dated 23-6-87, which were also referred before the lower appellate Tribunal in support of his contention that the revision petitioners are entitled to seek exclusion of the lands from their holdings as claimed by them. But it is seen from a perusal of the said orders, as rightly observed by the Appellate Tribunal also, that such plea for exclusion of the lands from the holdings of the declarants was raised only during the pendency of the proceedings u/s 9 of the Act before the Appellate Tribunal and before the High Court during the pendency of revision proceedings. In all those cases, the orders of the Primary Tribunal regarding the extent of the holding of the declarants were being questioned in the higher courts and as such, no final orders were yet passed fixing up the standard holdings of the declarants. Under those circumstances, the appellate court and the revision court had allowed the plea of

the declarants for exclusion of certain lands from their holdings on the ground that such claim was bonafide. But in the present case, the orders of the Tribunal fixing up the standard holdings of the declarants in both the cases had already become final and the surrender proceedings were already initiated and the lands to be surrendered were also identified. Under such circumstances, it is not open to the revision petitioners to seek exclusion of the concerned lands from their holdings during the course of surrender proceedings. Therefore, the above said decisions of this court are also not of any assistance for the contention of the learned Counsel for the petitioners.

10. LA. 1070/93 was filed by the revision petitioner in C.R.P. No. 3401/94 under Rule 16(7) of the A.P. Land Reforms Rules seeking exclusion of the land, which is said to have been donated to Bhoodan Yagna Board, from her holding. But Rule 16(7) cannot be utilised by the said revision petitioner as she is the declarant in the case before the Primary Tribunal and as Rule 16(7) applies only to the person other than a party to the proceedings. In that view also the revision petitioner in C.R.P. No. 3401 /94 is not entitled for the relief prayed for by her. In view of all these circumstances, there are no merits in the present revision petitions.

11. Both the revision petitions are, therefore, dismissed but without costs.