
(2005) 09 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3392 of 1996

Merla Rama Das and Another

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Andhra Pradesh (Telangana Area) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 — Rule 4(1), 4(3), 5

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 138E(2), 38(7), 38E, 38E(1)

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 13, 3

Constitution of India, 1950 — Article 14, 16, 21, 31B

Citation : (2006) 1 ALD 271

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : V.L.N.G.K. Murthy, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—This writ petition is filed to strike down explanation to Section 3(i) of the A.P. Land Reforms (Ceiling and Agricultural Holding) Act, 1973 (hereinafter referred to as "the Act") as unconstitutional and violative of Articles 14, 16 and 21 of the Constitution.

2. The main contention of the learned Counsel for the petitioner is that by virtue of explanation to Section 3(i) read with Section 13 of the Act, there is discrimination between the tenants of agricultural lands in Telangana Area of Andhra Pradesh, who are governed by the provisions of the Andhra Pradesh (Telangana Area) Tenancy Act, 1950 (hereinafter referred to as "the Telangana Area") and the tenants of agricultural lands in Andhra Area, who are governed by the provisions of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (hereinafter referred to as "the Andhra Act") because the benefit being extended

to the tenants in Telangana Area is deprived to the tenants in the Andhra Area though they are in the same State and thus Article 14 of the Constitution is violated. By placing strong reliance on *Indira Sawhney v. Union of India and Ors.*, 1999 (10) Supreme 270, she contended that inasmuch as the preamble to the Constitution emphasizes the principles of equality as the basis of our Constitution and since even constitutional amendments, which amend the basic structure of the Constitution would be ultra vires the powers of Legislature, the explanation to Section 3(i) of the Act being violative of the basic structure of the Constitution i.e., right to equality is liable to be struck down.

3. The contention of the learned Assistant Government Pleader is since the Act is included in IX Schedule of the Constitution, validity of any provisions thereof cannot be questioned, by placing strong reliance on *Waman Rao and Others Vs. Union of India (UOI) and Others*, .

4. Section 3(i) of the Act reads as follows:

Section 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 and by another person in any other capacity, such land shall be included in the holding of both such persons.

So in view of explanation to Section 3(i), land held by two or more persons in different capacities mentioned in (i) to (v) thereof shall have to be included in the holding of all such persons. Since the Act is made to enforce agrarian reforms, the object of the Legislature, obviously, is that no person should "hold" more extent of land than that is prescribed by the Act in "any capacity" mentioned in Section 3(i) of the Act.

5. The main contention of the learned Counsel for the petitioner is that inasmuch as Section 13 of the Act lays down that the land in possession of a protected tenant is liable to be excluded from holding of the owner, the same benefit ought to have been extended to the land in possession of the tenant in Andhra Area also, because tenancies of agricultural lands in Andhra Areas also are made leases in perpetuity and so it will not be possible to the owner to evict a tenant in Andhra Area, unless the conditions mentioned in the Act, to seek his eviction are

fulfilled. In my considered opinion there is a basic fallacy in the above submission because tenant of agricultural land in Andhra Area, even after the tenancy is made perpetual remains a tenant only but not the owner, but a protected tenant of agricultural land in Telangana Area would become the owner of that much extent of land mentioned in Section 38-E of the Telangana Act, if the conditions mentioned therein are satisfied and so his erstwhile "landlord" ceases to have any interest in such land and thus he would not come under any of the category mentioned in (i) to (v) of Section 3(i) of the Act.

6. In fact this Court in *Government of A.P. v. A.V. Prasada Babu* 1984 (2) APLJ 101 (HC) and the Apex Court in *State of Andhra Pradesh Vs. Mohd. Ashrafuddin*, and in *Yedida Chakradhararao (Dead) through his Lrs and Others Vs. State of Andhra Pradesh*, , had the occasion to consider the effect of Section 3(i) of the Act. The learned Single Judge of this Court in *A.V. Prasad Babu* case (supra), clearly held that inasmuch as the Act is placed in the IX Schedule of the Constitution, all the provisions of the Act including the whole Section 3(i) of the Act are saved from challenge by reason of the protection given by Article 31-B of the Constitution. In fact in *Chakradhararao* case (supra), their Lordships observed :

It was submitted by learned Counsel for the appellants that the definition of the word "holding" contained in Sub-section (i) of Section 3 was an exhaustive definition and that definition contained in the main section could not be interpreted in the light of the Explanation thereto. It was submitted by him that the meaning of the term "holding" and "held" in Sub-section (i) of Section 3 could not be governed by the Explanation. In support of the contention, reliance was placed on a decision of this Court in *Burmah Shell Oil Storage and Distributing Co. of India, Ltd. and Another Vs. The Commercial Tax Officer and Others*, . In our opinion, this decision is hardly of any assistance in the matter before us. It is well settled that the provisions in an Act have to be read harmoniously and in the light of the context in which they occur. In our opinion, there can be no quarrel with the reliance being placed on the Explanation in order to understand the meaning of the term "holding" and "held" used in Sub-section (i) of Section 3 of the said Act....

So it is clear that Section 3(i) of the Act has to be read with the explanation thereto for understanding the meaning of "holding" and "held" used in the Act.

7. In fact petitioner in this case filed her declaration with respect to her "holding" as on 1-1-1975. It should be remembered that by 1-1-1975, by which date leases of agricultural land in Andhra Area were not made perpetual leases by the Andhra Act. By virtue of the Amendment Act No. 39 of 1974, which came into force from 1-7-1980, amending several provisions of the Andhra Act, only leases at the time of coming into force of the Amendment Act 39 of 1974 are made leases in perpetuity. So the tenants of the petitioner might have become her perpetual tenants only after the advent of the amendment Act 39 of 1974 but they did not become "owners" of the lands leased to them and petitioner

continues to be the owner of those lands also. As per the Andhra Act, only if the owner intends to sell the land in possession of a tenant will the tenants have the first option to purchase the land but a tenant cannot compel the landlord to sell the land to him. But as per Section 38 E of the Telangana Act, a protected tenant is given an option to purchase the land in his possession from the landholder subject to the conditions mentioned in Section 38(7) of the Telangana Act. If the protected tenant does not satisfy the conditions mentioned in Section 38(7) of the Telangana Act, he cannot have the option to purchase the land in his possession as protected tenant. Rule 4(1) of the Andhra Pradesh (Telangana Area) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 (hereinafter referred to as "the Rules") framed u/s 38 E of the Telangana Act reads :

As soon as may be after the issue of the notification under Sub-section (1) of Section 38-E, the Tribunal shall, after taking into consideration the tenancy records, if any, prepared and maintained under the Act and any other record of rights or revenue accounts if any, for the time being in force and after holding or causing to be held summary enquiry in respect of the lands held by the protected tenants and their respective landholders, determine the extent of lands held or deemed to be held by the protected tenants the extent of land held by the landholders on the date notified u/s 38-E and the extent which the protected tenant is entitled to purchase from the landholder and prepare a provisional list in Form I showing the names of all protected tenants to whom the ownership is deemed to have been transferred u/s 38-E and the extent and description of land so transferred and vested in the protected tenants.

Sub-rule (3) of Rule 4 of the rules relates to preparation of final list of protected tenants and as per Rule 5 of the rules the Tribunal has to issue a certificate u/s 138E(2) of the Telangana Act in Form II to every protected tenant after the declaration of the final list under Sub-rule (3) of Rule 4 of the rules. In view thereof, it is clear that all protected tenants in Telangana Area cannot become the owner of the entire or a part of the property in their possession as protected tenant automatically, because conditions laid down in Section 38(7) of the Telangana Act are to be satisfied. If those condition are not satisfied no protected tenant can become the owner of the land in his possession by virtue of Section 38E of that Act.

8. Section 13 of the Act reads as under:

Special provision for protected tenants :--

(1) Where the holding of any owner includes any land held by a protected tenant, the Tribunal shall in the first instance, determine whether such land or part thereof stands transferred to the protected tenant u/s 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands, Act, 1950 and if so, the extent of land so transferred; and such extent of land shall thereupon be excluded from the holding of such owner and included in the holding of such

tenant, as if the tenant was the owner of such land for the purpose of this Act.

(2) Subject to the provisions of Sub-section (1), the relevant provisions of the Act aforesaid shall apply in the matter of purchase of such land by such protected tenant.

So it is clear that only that much extent of land which stood transferred to the protected tenant u/s 38E of the Telangana Act only would be excluded from the holding of the landlord, because he ceases to be the owner of that land and would not also fall under any of the categories (ii) to (v) mentioned in Section 3(i) of the Act.

9. If the petitioner felt that the landlords in Telangana Area are having a benefit by virtue of Section 13 of the Act, the challenge should be to Section 13 of the Act, but not to the explanation to Section 3(i) of the Act, which only mandates that persons "holding" the land in any of the capacities mentioned in Clauses (i) to (v) of that Section 3(i) of the Act have to be held as "holding" that land as per the Act. It should be remembered that explanation to Section 3(i) of the Act operates throughout the State of Andhra Pradesh and is not restricted either to Telangana or Andhra Area.

10. For the above reasons, I find no merits in this petition.

11. Hence, this writ petition is dismissed. No costs.