(1955) 03 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 108 of 1953

Mokshagundam Narasaiah APPELLANT

Vs

Estates Abolition Tribunal and Others RESPONDENT

Date of Decision : 31-03-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Estates Abolition Act — Section 2, 23, 5, 5(2), 9(4)
Estates Abolition Amending Act, 1951 — Section 64A, 64A(2)

Citation : AIR 1957 AP 903

Hon'ble Judges : Subba Rao, C.J;Krishna Rao, J

Bench : Division Bench

Advocate : K. Kotayya, for the Appellant; M. Seshachalapathy, Addl. Govt. Pleader, V. Vedantachari, P. Ramireddi and Supramanya Reddi, No. 2., for the Respondent

Judgement

Krishna Rao, J.—This is an appeal, against the order made by Govinda Menon, J., in Writ Petition No. 31 of 1952 by which an appellate decision of the Estates Abolition Tribunal, Chittoor, was quashed by a certiorari and the decision of the Settlement Officer No. Ill, Chittoor, was restored.

2. The Appellant is one of the shrotriemdais of the inam village of Moksliagumiam in the Kur-nool District and the contesting 2nd Respondent is a ryot named Poll Redde of that village. The dispute between them relates to the cuestion whether the said village is an "inam estate" as defined in Section 2, Clause (7) of the Madras Estate (Abolition and Conversion into Ryotwari) Act (XXVI of 1948) (hereinafter referred to as the Estates Abolition Act). The Appellant''s contention is that Mokshagundam is not an inam estate, while the 2nd Respondent''s contention is that it is Section 2, Clause (7) of the Estates Abolition Act defines as inam estate as follows:

Inam estate" means an. estate within the t. meaning of Section 3 Clause (2) (d), of the Estates Land Act, hut does not include an inam village which became an estate by virtue of the Madras Estates Land (Third Amendment) Act, 1936." The first part of the definition imports all inam villages coming within the meaning of Section 3 Clause (2) (d) of the Madras Estates Land Act, inclusive of its three Explanations, and the second part excludes such of those inam villages as come within Section 3 Clause (2) (d) by reason only of the changes therein introduced by the Third Amendment Act of 1936. It is not necessary for the purpose of this appeal to canvass the several provisions of Section 3 Clause (2) (d), which were amended from time to time.

It is sulllcient to notice that it has been well settled by decisions that the said clause referred throughout only to grants in inam of whole villages and not of portions of villages; and that ;'' grants which did not satisfy the condition that "the land revenue without the kudivaram has been granted in inam to a person not owning the kudivaram thereof" came to toe included in the said clause by virtue of the Third Amendment Act of 1936, In other words, two of the conditions requisite for making an inam village an inam estate (1) that the inam grant or confirmation there-in. A. TuitvuN Ah (Krishna Rao J) of must have comprised the entire village and (2) that the grant must have been of the land revenue without the kudivaram and the grantee must have been a person not awning the kudivaram of the village. The dispute between the parties is whether either or both these conditions have been satisfied in the case of Mokshagundam.

3. The facts which have given rise to the appeal may be briefly stated. In October, 1950, the Settlement Officer No. Ill, Chittoor, held an inquiry u/s 9 of the Estates Abolition Act and gave his decision that the inam village of Mokshagundam is an inam estate. In the course of his judgment, he dealt with the entire documentary evidence adduced before him by the Appellant add by the second Respondent and other ryots of the village. He held that the grant of the entire village, on a construction of the entries found in the Inam Pair Register copy Exhibit R-21, and also because the village had been treated as an estate io a suit'' bled by the Appellant to recover rent, S, S. No. 1 of 1937 on the file of the Revenue Divisional Officer, Markapur, the decision in which had boon taken up on appeal to the District Judge, Kuruool, and to the High Court (Vide Exhibits R-3 and R-5).

The Appellant relied on a judgment dated 14th September, 1943, of the Deputy Collector, Markapur, in which the plaint was ordered to be returned for presentation to the proper Court on the ground that the village is not an estate inasmuch as the grant was not of the whole village, but was exclusive of formbooks and imams. The Settlement Officer distinguished this decision, because the addition to Explanation (D by Madras Act II of 1945 with retrospective effect has made the exclusion of formbooks and minor inams immaterial. On the question whether the Inam grant was to a person owning the kudivaram, the Settlement Officer Ked against the Appellant, because there were a number of instances of the ryots having alienated and otherwise dealt with the kudivaram and because of the presumption allowed by Section 23 of the Estates

Land Act and by Section 9 (7) of ''the Estates Abolition Act.

The Appellant preferred an appeal against the decision of the Settlement Officer; winch came up as A. S. No. 155 of 1951 before the Estates Abolition Tribunal, Chattier. The Tribunal confined themselves to a construction of the Inam Fair Register copy Exhibit R-21. They observed that at the time of the Inam Settlement, there was only an arrangement for realizing the 14/16th share in the revenue of the village due to Government by allowing the shrotriemdars to take up the entire village, and this did not amount to a grant of the melvaram of the entire village. As the shortriem-clers got only a 2/16th share of the melvaram of the village, they took the view that the grant was not of the melvaram of the entire village and would not constitute an estate, within the meaning of the Estates Land Act. In this view, they considered it unnecessary to decide whether the grant was of the melvaram only and whether the grantee was the owner of the kudivaram. They allowed the appeal and reversed the decision of the Settlement Officer.

4. The 2nd Respondent applied to the High Court for a writ of certiorari to quash the proceedings of the Tribunal. Govinda Menon, J., who heard the petition, observed in his order that the Tribunal had entirely failed to take note of the decisions of three Courts in which Mokshagundam has been treated as an estate. The decisions referred to by him were those marked as Exhibits R-3 to R-5 before the Settlement Officer. By the judg ment Exhibit R-3, the Appellant got a dec ceo for rent u/s 77 of the Estates Land Act in Section 8 No. 1 of 1937 on the file of the Revenue Divisional Officer, Markapur. By the judgment Exhibit R-4 which was given on the appeal from S, 8. No. 1 of 1937 preferred by the Appellant, the District Judge of Kurnool increased the rate of rent; from Rs. 5 per acre tb Rs. 15 per acre. Exhibit. R-fi is the judgment of the High Court dismissing the second appeal preferred by some of the Defendants tenants on the ground that; there was no point of law.

Govinda Menon J., held that all the three Courts proceeded on the basis that the village is an estate, that as the Appellant who filed S. H. Mo. 1 of 1937 invited the Court to proceed on that basis, the principle of constructive res judicata applies, and that the three judgments Exhibits (R-3 to R-5) are binding on the Tribunal under 64-A. (2) of the Estates Abolition Act, We may observe in passing that Govinda Menon J., read Exhibit R-3 as showing that the Appellant treated the village as an estate coming u/s 3 (2) (d) of the unamended Estates Land Act. This is not correct because the discussion under issues 3 and 6 in Exhibit R-3 shows that the Appellant contended before the Revenue Divisional Officer that the original grant was of both melvaram and kudivaram, which is inconsistent with foe village having been an estate under the unamended K 3 (2) (cO However, if as held by Govhuia Menon J., Exhibits R-3 to R-5 arc binding on the Tribunal u/s 64A (2), it would not be open to the Tribunal to hold, as they have dune, that the village is not an estate within the meaning of the Estates Land Act. Govinda Menon J., proceeded next to construe Exhibit Rule 21, and finally said:

It is, therefore, clear that even before the Imam Commission enquiry what was granted to the inarndar was the entire village with liability Cast upon him to pay 14/lGth or the rnoivaram to the Government as quit rent. This 14/lGth portion might be fluctuating, but after the Inam, Commission confirmed the grant, u, fixed amount was made payable to the Government as quit rent. The statement by the Tribunal that the melvaram does not comprise of the entire village is on the face of it incorrect. The entire village has been granted but only a portion of the melvaram is directed to be paid to the Government.

The learned Judge found that the judgment of the Tribunal was therefore erroneous on the face of the record, and that it was unnecessary to refer the parties to a separate suit as there has been a decision about the estate nature of the village on previous occasions.or these reason he quashed the order of the Tribunal and restored that of the Settlement Officer.

5. It will be seen that the dispute as to whether the second condition mentioned by us in paragraph 2 above has been satisfied and the village therefore did not become an estate by virtue of the Third Amendment Act of 1936 was not gone into at all by the Tribunal. Nor was it decided by Govinda Menon J., except by a passing inference from Exhibit R-3 which is incorrect, as indicated by us above. The question has also not been argued before us, and in fact, it would not be permissible in these proceedings for the parties to invite our decision thereon. Under S. 9 (4) (c) of the Estates Abolition Act, the decision of the Tribunal as regards whether an inarn village is an inam estate or not is final, and it follows that if any material question affecting the decision has not been considered by the Tribual, the only remedy is to call upon the Tribunal to decide it. With regard to the facts in dispute, we therefore propose to confine 6ui"elves to the controversy as to whether the village is or is not an estate as defined in Section 3(2)(d) of the Estates Land Act.

6. Sri K. Kotayya for the Appellant attacks the order of Govinda Menon J., on three grounds. The first is that S. (54-A (2) does not apply at all to the three decisions Exhibits K-3. R-4 and R-5. The second is that the Tribunal has correctly construed, the effect of the entries in the ''nam Fair Register (Exhibit R-21), The third is that even if the conclusion readied by the Tribunal were wrong, it could not, in law, be corrected by a certiorari.

7. In order to deal with the first, ground, it is necessary to look at S. 64-A, which was inserted into- the Estates Abolition Act by Amending Act XVII of 1951.

Res judicata. G4-A. (1) The decision of a Tribunal or Special Tribunal in. any proceeding under this Act, or of a Judge of the High Court hearing; a case u/s 51 (2), on any matter falling within its or his jurisdiction shall be binding on the parties thereto and persons claiming under them, in any suit or proceeding in a Civil Court in so far as such matter is in, issue between the parties or persons aforesaid in such suit or proceedings.

2. The decision of a Civil Court (not being the Court of a District Munsif or a Court of Small Causes) on any matter falling within its jurisdiction shall lie binding on the parties thereto and persons claiming under them, in any proceeding under this Act before a Tribunal or Special Tribunal, or a Judge of the High Court u/s 51 (2), in so far as such matter is in issue between the parties or persona aforesaid in such proceeding,

For invoking Section 64-A(2), (1) there must be a decision, of a Court on a matter; (2) the Court must be a Civil Court other than the Court ol R District Munsif or a Court of Small Causes ; (3) ti.ie matter must fall within the Court''s jurisdiction; (4) the matter must be in issue in n proceeding under the Estates Abolition Act before the Tribunal or a Special Tribunal or a Judge of the High Court u/s 5i (2); and (5) the parties or their privies Who join the issue must be th-.: same as these to the Civil Court''s decision. If all these conditions are satisfied, the Civil Court''s decision: would be binding in the proceedings under the Estates Abolition Act.

8. Svi K. Kotayya contends that Section 64-A (2) refers only to matters actually and not constructively decided by a Civil Court, that the expression "Civil Court" does not include Revenue Courts under the Estates Land Act. such as the Courts of the Deputy Collectors and Revenue Divisional Officers, and that even the decisions at the District Courts and higher Courts sitting in appeal or revision from decisions of Revenue Courts would not be binding if they related to '' matters not falling within the exclusive jurisdiction of Revenue Courts. On the other hand, Sri Ram Reddi for the contesting 2nd Respondent contends that the rule of constructive res judicata applies to the decisions referred to in Section 64-A. that the expression "Civil Court" includes Revo. nue Courts, and that the only restriction in Section 64-A (2) as to the: matter decided is that the matter must fall within the iurisdiction oi the Civil Oourt.

9. This leads us to a construction of the terms Of Section 64-A (2), which is res Integra. As regards the question whether the rule of constructive res judicata applies, it appears to us that in order that there might he a decision of a Court on a matter the matter must be left for the decision of the Court. If the parties before the Court agree between themselves on any matters and ask the Oourt to proceed on that basis, the decision on the said matter is taken outside the Court and would be.the decision of the parties & not that of the Court. Thus the plain and natural meaning of the language used in Section 64-A (2) is that it refers only to a substantial question, which has been actually decided by a Civil Court. The rule of res judicata is enacted in Ex.plauat.ion IV to Section 11, Code of Civil Procedure.

But the. language of Section 64-A (2) of the Estates Abolition Act is Quite different from that of Section 11 of that Code. The decisions in Malubhai V. Sursangji, ILR 30 Bom 210 (A)cited by Sri K. Kotayya and in Ba.yyam Naidu v. Survanava-yana, ILR 37 Mad 70: (AIR Mad 399, (2)) (B), cited by Sri Ram Heddi turn on the terms of Section 11, CPC and have no application to the construction, of G-i-A. It will be noticed that the word used in B. 04-A is decision and not "Judgment." The distinction between the meanings of the two words has been brought out in Rajah Tasadduq Rasul Khan v. Manik Chand, ILR 25 AH 109 (PC) (C). The word "Judgment" unlike the word decision would include the reasons or grounds for a decision.

If the legislature had intended that the reasons or grounds on which a decision proceeded should be binding, it is reasonable to suppose that the word "Judgment" would have linen used instead of the word "decision." VV0 are of the view that having regard to the language of Section 64A (2), the word "decision" covers only matters actually decided and not matters constructively decided by Civil Courts. This construction applies with equal force to the decisions referred to in Section 64A (1).

10. Turning to the question whether the expression "Civil Court" would include a Revenue ''Court, our attention has boon drawn to two decisions in which it has been so held. In Nilmoni Singh Deo v. Taranath Mukerjee ILR 9 Cal 295 (PC) (D), the Judicial Committee held that a Rent Court is a Civil Court within the meaning of the old CPC of 1859, and this in spite of the fact that several sections of the Act which established the Rent Courts drew a distinction between them and Civil Courts. Similarly in Rajah of Venkatagiri Vs. Shaik Mahaboob Saheb and Others, (E), a Division Bench of the Madras High Court took the view that a Revenue Court is a Civil Court. There the question raised was whether the High Court has jurisdiction u/s 115 of the CPC to entertain a revision petition against an order of a District Collector sitting as a Revenue Court.

The answer to the question depended on whether the Collector''s Court is a Civil Court subordinate to the High Court within the meaning of Section 3 of the Code of Civil Procedure. Patanjali Bastri J., (as he then was) delivering the judgment of the Division Bench said:

To say that the Collector''s Court is a "Civil within the meaning of this section will mple and complete solution of the problem.

In our judgment, it is also the correct solution ? There can be little doubt that in the present case the Sub-Collector and the District Collector were hearing and determining disputes of a Civil nature, and We see no sullicient reason why the proceedings before them should not be regarded as civil proceedings" and there Courts as "Civil Courts" for the purpose of Section 3.

11. While passing the Amending Act XVII of 1951, the legislature must be presumed to have been aware that the current of judicial authority was in favors of the view that the expression "Civil Court" includes a Revenue Court.

12. It is true that in Section 64-A (2) we find the words in brackets which exclude the Court of a District Munsif and fee Court of Small Causes from the category of Civil Courts, whose decisions would be binding. This might suggest that the legislature was thinking only of decisions of Civil Courts of a higher

grade than the Courts of District Munsifs and Courts of Small Causes. There seems to be no reason why if the decisions of Courts of District Munsifs are not binding on the tribunals, the decisions of Deputy Collectors and Revenue Divisional Officers should be bin-ding. But if the Legislature intended to exclude the decisions of Revenue Courts, it could have easily mentioned Revenue Courts in the words within the brackets.

13. The expression "Civil Court" has been used in both the Sub-sections of Section 64-A and the words of exclusion in brackets have been deliberately introduced in Sub-section (2) alone. In the circumstances, it would not be open to add to the words of Section 64-A (2) by Judicial interpretation him observed in Maxwell''s Interpretation of Statutes, words should not be added by implication Into a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express.

14. Sri K. Kotayya points out that under the law prior to the Estates Abolition Act, the decisions of Revenue Courts had the force of res judicata u/s 189 of the Estates Land Act only as regards the matters falling within their exclusive jurisdiction, and not as regards incidental disputes or matters. He has also referred us to the decision of a Full Bench of the Madras High Court in Pollapalli Venkatarama Rao and Others Vs. Musunuru Venkayya and Others, (P), which affirmed this position, He points out that if the expression "Civil Court" in Section 64-A (2) is held to Include a Revenue Court, the decisions of Revenue Courts even on incidental disputes or matters would be binding on the Tribunals. This would be the consequence because the words "matter was falling within its jurisdiction" in Section 64-A (2) have not been qualified or restricted in any manner. But we need not shrink from an inter pretation which might alter a previous law. As explained by Lord Simon in Nokes v. Doncaster Amalgamated Collieries 1940 ACC 1014 1022 (G):

The golden rule is that the words of a statute must prima facie be given their ordinary meaning. We must not shrink from an interpretation which will reverse the previous law, for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or, conversely, to prohibit results which would otherwise follow. Judges arc not called upon to apply their opinion of sound policy so as to modify the plain meaning of statutory words, but where, in construing genera words, the meaning of which is not entirely plain there are adequate reasons for doubting wherhe the Legislature could have been intending so wide an interpretation, the narrower of which would lail to achieve the manifest purpose of the legislation, we should avoid a construction which would re? duce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

If we construe the expression "Civil Court" in Section 64-A (2) as not including, Tovemuo Courts, even their decisions on matters falling within'' they?ve exclusive jurisdiction would not be binding. Under S. 56 (2) of the Estates Abolition Act, for instance, Tribunals might be called upon to decide questions relating to the periods and the amounts of rents in arrears. These questions fell within the exclusive jurisdiction of Revenue Courts and would be set at large If the decision;; of Revenue Courts have ho binding force. The object of Section 64-A (2) is to restrict the scope of the controversies before the Tribunal, so that they may speedily nad effectively decide the new questions which arise for their determination under the Estates Abolition Act. In our opinion, there are no valid grounds to presume that the expression "Civil Court" in Section 64-A (2) does not include Revenue Courts. The expression includes all Courts of Civil Judicature whose procedure is in essenco governed by the Code of Civil Procedure, and therefore includes also Revenue Courts in this State.

15. It will be convenient at this stage to dispose of the other ground of law taken by Sri K. Kotayya, which raises the question of the principles regulating the issue of a writ of certiorari. The principles have been fully explained by the Supreme Court in T.C. Basappa Vs. T. Nagappa and Another, (H) and in Hari Vishnu v. Ahmad Ishaque, 1955 SCJ 267: (S) Am 1955 SC 233) (I).,. Even when there is no error of jurisdiction or of procedure, a certiorari may issue when there is a manifest error on the face of the proceedings, as when the decision is based, on clear'' ignorance or disregard of the provisions of law, But this is subject to the limitation that the Court granting a certiorari acts not in an appellate but only in a supervisory capacity and does not substitute its own views for those of the inferior tribunal. In the case before us, it is not suggested that there is any error of jurisdiction or procedure. The only question for our consideration is whether there is an error apparent on the face of the Tribunal''s proceedings.

16. In the view we have taken of the scope of Section 64A (2), it is clear that the decisions in Exhibits R-3 to R-5 are not binding on the Tribunal, because they do not expressly decide whether the village is an estate u/s 3 (") (d) of the Estates Land Act. The principle of constructive repudiate cannot be invoked., as was done by Govinda Menon J. But Sri Ham Reddi ('"'intends that even if Section 64-A (2) cannot be applied to Exhibits R-3 to R-5, it would be applicable to toe appellate judgment, dated 24th Msrch, 1944.

the District Judge, Kurnool from the decision dated 14th September, 1943 of the Deputy Collector, Markapur which was referred to and merely distinguished by the Settlement Oilier. He points out that the appellate decision expressly holds that the grant was of the whole village, and that It was filed before the Tribunal along with the 2nd Respondent''s statement, dated 29th November, 1951.

The Tribunal probably did not consider the effect of Section 64-A (2) at all, because the amending Act XVII of 1951 became law only on 7th August, 1951, shortly before they gave their decision on 29th November, 1951. The omission of the Tribunal to advert to the Said appellate judgment, dated 24th March, 1944, of the District Judge, Kurnool and to the effect thereof is a palpable error on the face of their proceedings.

17. With regard to the construction of the entries in the Imam Fair Register copy Exhibit R-21, the Tribunal''s reasoning that because the grant was of a share in the Melvaram, the grant was not of the Melvaram of the entire village is obscure, Govinda Menon J., came to a conclusion different from that of the Tribunal, and held that the construction put by the Tribunal on Exhibit R21 is a manifest error. We are not prepared to say that Govinda Menon J., was wrong in this respect, but we have to guard ourselves against substituting our own views for the views of the Tribunal as to the effect of Exhibit R21. We would prefer to rest our decision on the ground that the Tribunal did hot construe at all the applicability of Section 64-A (2) to the appellate judgment of the District Judge, Kurnool, dated 24th March, 1944. This is certainly a sufficient reason for quashing the proceedings of the Tribunal by a certiorari.

18. So far as the portion of Govinda Menon J. s order restoring the decision of the Settlement the is concerned, it amounts to a substitution of his decision for the Tribunal''s decision. Further, the question whether the inam village became an estate by virtue of the Third Amendment Act of 1936 has not been considered by him or the Tribunal. We therefore confirm the order of Govinda Menon J., to the extent of quashing the Tribunal''s order by a certiorari, but set aside his order so far as it restores the decision of the Settlement Officer. The Tribunal will have to dispose of A. S. No. 155 of 1951 afresh in the light of our observations, and will not be bound by the judgment of Govinda Menon J" as regards the construction and effect of the entries in the Inam Fair Register. The appeal is allowed to this extent, and as both parties have failed in part, they will bear their own costs.

