
(1994) 09 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6918 of 1994

M/s. Guntu Malleswaraswami Mill

APPELLANT

Vs

District Collector and Magistrate, Khammam and others

RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 166
Andhra Pradesh Encroachment (Extension and Amendment) Act, 1958 — Section 13
Andhra Pradesh Land Encroachment Act, 1905 — Section 10, 112, 14, 6, 7

Citation : AIR 1995 AP 206 : (1995) 1 APLJ 37

Hon'ble Judges : Y. Bhaskara Rao, J

Bench : Single Bench

Advocate : N. Rama Mohanrao, Pratap Narayana Singhi, K.S.V. Subba Rao and Abhinand Kumar Shavili, for the Appellant; Govt. Pleader for Revenue, for the Respondent

Judgement

1. This petition is filed seeking a writ of prohibition to direct the respondents herein to refrain from proceeding any further pursuant to the notice in R.C No-B3/7612, 91 dated 31-3-1994 issued by the District Collector, Khammam under S. 166-B of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli.

2. The facts of the case are that the petitioner-mill is one of the oldest in the vicinity and had been constructed about 80 years back, by Saradevabbatla Narasimha Ramaiah and his three sons in the ipaddy fields cultivated as wet lands . The former State of Hyderabad appear to have granted joint patta to an extent of 18 acres in S. Nos. 511 to 520 and in that patta land Narasimha Ramaiah and his sons have constructed a rice and ginning mill abutting S. No. 123, which is Bancharai land. An area of 11000 sq. yards was earmarked for the mill. Certain extent of land was also transferred to various individuals for the construction of buildings under registered sale deeds. Over the years, Khammam town has developed towards the area where the petitioner-mill was running. The petitioner-mill is in existence since 80 years and being enjoyed by Narasimha Ramaiah and his predecessors. Three more mills and several godowns have been

added to the same mill in the same compound.

3. The third respondent issued a notice dated 17-12-1991 stating that certain extent of land forming part of S. No. 123 has been occupied by the petitioner-mill and called upon the petitioner to establish its right and title to the extent of land occupied by the petitioner-mill. The said notice was received by the petitioner on 19-12-1991 and it submitted a reply to the third respondent on 23-12-1991 pointing out that the mill was in existence for nearly 100 years and it required to ascertain various other documents and consequently, the time granted viz., three days was insufficient and therefore requested for a month's time. While so, another notice dated 21-3-1992 under S. 7 of the A.P. Land Encroachment Act, 1905 was served on the petitioner on 25-3-1992. It has been averred in the said notice that an extent of 19 guntas in S. No. 123 has been encroached by the petitioner. The petitioner submitted a detailed reply to the third respondent disputing the veracity and correctness of those allegations. The petitioner also filed sale deeds of the land in question from the year 1937 onwards to establish the fact that the land in question was properly and validly held. The Mandal Revenue Officer conducted enquiry into the matter and the petitioner also participated in the enquiry. The Mandal Revenue Officer passed an order on 28-9-1992 dropping further action for evicting the petitioner under S. 6 of the A. P. Land Encroachment Act. The order also communicated to the petitioner. Thus, the proceedings initiated under the provisions of the A. P. Land Encroachment Act came to an end in September.

4. The District Collector, Khammam issued, a notice in R.C. No. B3/76I2/91 dated 31-3-1994 under S. 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli directing the petitioner to appear before the Joint Collector at 3 p.m. on 15-4-1994 as the case is reopened. The above-said notice is challenged in this writ petition on the grounds that invoking of Section 166-B of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli is contrary to Sec. 13 of the A.P. Land Encroachment (Extension and Amendment) Act, 1958, hereinafter called "the Act 25 of 1958", wherein it was made clear that nothing contained in the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli shall apply to any matter or proceeding dealt with in the Principal Act as amended by the Amendment Act and that the District Collector has no jurisdiction to issue impugned notice.

5. The learned counsel for the petitioner contended that when once the Mandal Revenue Officer has dropped the proceedings initiated under the Land Encroachment Act, the Collector cannot confer power on himself under the Act as the Act does not confer any suo motu power on him, unless an appeal is filed within limitation before the Collector. He further contended that the suo motu power to call for records is conferred only on the Government under S. 12-A of the Land Encroachment Act and that therefore the impugned notice issued by the Collector is without jurisdiction. It is further contended that as per S. 13 of the Act 25 of 1958, the provisions of the A. P. (Telangana Area) Land Revenue Act,

1317 Fasli, hereinafter called -the Act No. VIII of 1317 Fasli, shall not apply so far as it relates to any matter or proceeding dealt with in the Land Encroachment Act, except in respect of things done or omitted to be done before the commencement of the Amendment Act and that therefore the Collector has no jurisdiction to issue notice.

6. The Government Pleader contended that the Collector has got ample powers to issue notice under the A.P. Land Encroachment Act as well as the Act No. VIII of 1317 Fasli.

7. In view of the above stated contentions, the important question of law to be decided is :

"Whether the Collector has got jurisdiction to take any action under A.P. (Telangana Area) Land Revenue Act, 1317 Fasli in regard to proceedings dropped under the A.P. Land Encroachment Act, 1905."

8. To appreciate the above question, it is relevant to refer to some of the provisions of the A.P. Land Encroachment Act, 1905, hereinafter called "the Act No. 3 of 1905."

9. Section 7 of the Act. No. 3 of 1905 provides for issuing a notice before any action under S. 6 of the Act for the eviction of the encroacher is taken. Section 7 of the Act No. 3 of 1905 provides for the procedure to deal with the encroachment by group of persons on Government lands and their eviction. Section 6 of the Act No. 3 of 1905 empowers the authorities to evict a person from the unauthorised occupation of the land by summary procedure. Section 10 of the Act No. 3 of 1905 contemplates an appeal against the orders passed under the Act. Section 12-A empowers the Government, either suo motu or an application made to them, to call for records and examine for the purpose of satisfying themselves as to the legality or propriety of any decision or passed by any authority subordinate to them under this Act. Section 14 of the Act No. 3 of 1905 bars the jurisdiction of civil Courts

10. The Andhra Pradesh Land Encroachment (Extension and Amendment) Act, 1958, i.e., Act 25 of 1958 was passed on 13-11-1958. Section 3 of the Act has extended the application of the Principal Act to the transferred territories of the State of Andhra Pradesh formed in 1956. Section 13 of the Act 25 of 1958 says that nothing contained in the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli shall apply in so far as it relates to any matter or proceeding dealt with in the Principal Act as amended by the Amendment Act, except as respects things done or omitted to be done before the commencement of this Act. Thus, S. 13 makes it clear that the provisions of the Act No. VIII of 1317 Fasli will not apply to (he proceedings relating to the Act No. 3 of 1905. When a specific statutory bar is imposed by the Act 25 of 1958, the powers conferred under S. 166-B of the Act No. VIII of 1317 Fasli cannot be exercised by the Collector. Therefore, the impugned notice issued by the Collector under S. 166-B of the Act No. VIII of 1317 Fasli is without jurisdiction. Therefore, the writ petition has to be allowed as

prayed for. However, this will not bar the authorities to take action according to law.

11. The writ petition is allowed accordingly. There will be no order as to costs.

12. Petition allowed.