(2004) 10 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10092 of 1993

Musku Mallaiah APPELLANT

Vs

The State of Andhra Pradesh RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 11, 2(9), 3, 4, 5(1)
Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 — Rule 27(4), 9
Constitution of India, 1950 — Article 246(1), 246(3), 254
Essential Commodities Act, 1955 — Section 3(1)
Registration Act, 1908 — Section 17, 17(1), 17(2)
Specific Relief Act, 1963 — Section 8(2)
Stamp (Amendment) Act, 1998 — Section 17(1), 17(2)
Stamp Act, 1899 — Section 2(10)

Citation : (2005) 1 ALD 485 : (2004) 6 ALT 155 : (2004) 3 APLJ 316

Hon'ble Judges : K.C. Bhanu, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : P.V. Narayana Rao, for the Appellant; Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—The Constitutional validity of Rule 27(4) of the Andhra Pradesh Rights in Land and Pattadar Pass Book Rules, 1989 (for short ''the Rules'') issued in G.O Ms. No. 570, Revenue-D.O.A & R dated 8.6.1989 is challenged in this writ petition.

2. The facts, as stated by the petitioner, are that he is the owner and possessor of land admeasuring five guntas in Sy.No. 815 situated at Nookapally Village, Mallial Mandal, Karimnagar District. He filed a suit in O.S No. 274 of 1993 on the file of the learned District Munsif, Jagitial against one Chakunta Madhusudhan Rao and others for declaration of his title in respect of the said land. His claim is that he purchased the land for a valuable consideration of Rupees Ninety under an oral sale deed on 1.1.1980 and continued in possession and enjoyment of the

land ever since the oral purchase and thus acquired title by adverse possession. The learned District Munsif, Jagitial passed a decree in the said suit dated 10.5.1993 based on the consent written statement filed by the defendants.

3. The petitioner having obtained the decree submitted an application before the 2nd respondent with a request to order the amendments in the entries made in the record of rights in accordance with the declaratory decree obtained by him. The 2nd respondent vide his proceedings dated 14.7.1993 directed the Mandal Revenue Officer to amend the entries in the record of rights as per Rules 27(4) and 9 of the Rules.

4. The contention of the petitioner is that necessary changes in the record of rights are required to be made on the basis of the decree obtained by him without any further obligation of payment of registration fee and stamp duty on the sale price of the land or the market value of the land, as the case may be. It is under those circumstances, the petitioner challenges the validity of Rule 27(4) of the Rules which is to the following terms:

"Whenever a court decree about acquisition of title by purchase of land through deeds on plain paper or by oral purchase is received from court or presented to the Mandal Revenue Officer for implementing and incorporating changes in the Record of Rights and Pattadar Pass Books, the Mandal Revenue Officer shall incorporate changes in the Record of Rights and Pattadar Pass Book, based on court decree only after collection of stamp duty and registration fee on the sale price of the land or market value of the land whichever is higher. If the person seeking execution of Court decree claims that he had already paid proper and adequate stamp duty in the Court and produces certificate issued by the Court to this effect and other evidence to the satisfaction of Mandal Revenue Officer, the Mandal Revenue Officer shall demand and collect only registration fee and incorporate changes in the Record of Rights and Pattadar Pass Books. If the decree is received or produced by or before a Registration Officer or other Officers, these officers shall immediately send these decrees to the concerned Mandal Revenue Officer for necessary action".

5. Sri P.V. Narayana Rao, learned counsel for the petitioner attacked the Rule based on Section 8 read with Section 11 of Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short ''Act 26 of 1971''). It was also contended that the impugned Rule is repugnant to the provisions of the Registration Act, 1908.

6. The learned Special Government Pleader submitted that it had come to the notice of the State Government that various transactions were coming into existence seeking entries into revenue records based on judgments and decrees obtained from civil Courts bypassing the regular process of registration and payment of stamp duty resulting in loss of revenue to the State. In order to arrest the unhealthy trend, necessary amendments were brought to the Rules making it obligatory on the part of the Mandal Revenue Officers to collect the

stamp duty and registration fee on the sale price of the land or market value of the land whichever is higher, in cases where the acquisition of title is by purchase of land through deeds on plain paper or by oral purchase and where such purchase is recognized by the Court decrees. Learned Government Pleader submitted that the Rule is intended to save the State Revenue and to avoid any recognition of rights of the purchasers through deeds on plain papers or oral purchases without paying stamp duty or registration fee.

7. In order to appreciate the rival contentions, a brief survey of Act 26 of 1971 and the Rules made thereunder is necessary. The Andhra Pradesh (Telangana Area) Record of Rights and Land Regulation 1358 Fasli provided for the preparation and maintenance of record of rights in the Telangana area of the State. There was no corresponding enactment providing for such statutory record of rights applicable to the Andhra area of the State. The matter has been considered at various levels and the Government having decided that a scheme for preparation and maintenance of record of rights should be implemented in the Andhra area of the State also, proposed to enact fresh legislation applicable throughout the State for the preparation and maintenance of record of rights, repealing the said Regulation. The Act underwent several amendments and it is not necessary for our present purpose to notice the details of those amendments. Act 26 of 1971 is thus an Act to consolidate and amend the law relating to the Rights in Land and Pattadar Pass Books in the State of Andhra Pradesh. Section 2 (9) of the Act defines "record of rights" as meaning records prepared and maintained under the provisions or for the purposes of the Act. Section 3 of the Act commands that there shall be prepared and brought up-to-date from time to time by the recording authority in such manner, and thereafter maintained in such form as may be prescribed, a record of rights in all lands in every village in that area and such record of rights shall have to contain particulars including the names of all persons who are owners, pattadars, mortgagees, occupants or tenants of the lands and other particulars prescribed therein. That after completion of preparation of the record of rights, the same is required to be notified in the Andhra Pradesh Gazette or the District Gazette in the prescribed manner. Any person affected by an entry in such record of rights is entitled to apply for rectification of the entries so made within a period of one year from the date of notification. The authorized Officer may after such enquiry give his decision on such application and direct rectification of the records of rights in accordance with such decision. Section 4 of the Act provides for intimation of acquisition of rights to the Mandal Revenue Officer within ninety days from the date of such acquisition and such acquisition may include acquiring rights by succession, survivorship, inheritance, partition, Government patta, decree of a Court or otherwise any right as owner, pattadar, mortgagee, occupant or tenant of a land etc. Section 5 provides for the procedure for amending and updating of the record of rights. Section 5-A provides for regularisation of certain alienations or other transfers of lands, otherwise than by registered document. Section 6 of the Act states that every entry in record of rights shall be presumed

to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of the Act. Section 8 which is relevant for our present purpose reads as follows:

"Bar of Suits: -- (1) No suit shall lie against the Government or any officer of Government in respect of a claim to have an entry made or in relation to any entry made in any record of rights or to have any such entry omitted or amended.

(2) If any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration."

8. The question that falls for consideration is whether Rule 27 (4) is contrary to Section 8 (2) of the Act?

9. It was contended that once the civil Court grants declaration of title, there is no other requirement for implementing the same by making entry in the record of rights and its amendment in accordance with such declaration. There is no requirement of payment of any registration fee or stamp duty on the value of the land. It is the impugned Rule which is subordinate to the provisions of the Act that requires such payment and therefore, the Rule is ultra vires.

10. The submission, in our considered opinion, is totally misconceived. That a close analysis of Section 8(1) and (2) of the Act makes it abundantly clear that it bars suits against the Government or any Officer of Government in respect of a claim to have an entry made or in relation to any entry made in any record of rights. It means no Government Officer cannot be sued for the action taken to have an entry made or in relation to any entry made in record of rights. No suit shall lie against the Government or its Officers in that regard. Section 8(2) of the Act provides for institution of a suit by an aggrieved person against any person denying or interested to deny his title in respect of an entry made in any record of rights. The right to file suit presupposes the person holding rights traceable to an entry made in any record of rights. He must be in possession of rights in respect of an entry made in any record of rights. Whenever such a right is sought to be denied, the person in possession of right based on entry made in any record of rights may file suit against such person denying or interested to deny the title to such right and seek declaration of his right under Chapter VI of the Specific Relief Act, 1963. Section 8(2) in no manner deals with the suits for declaration of title simpliciter in respect of the lands. The declaration contemplated is a declaration of ones title to such right to which one is in possession by an entry made in the record of rights. The declaration is in relation to an entry that is already made in any record of rights. Section 8(2) deals with possession of rights of an entry made in any record of rights. Whenever such a right is infringed, the person in possession of such right based on entry made in

any record of rights is entitled to file suit for declaration of his right to possess entries made in record of rights. Any alteration in the record of rights at the instance of person denying such right is required to be amended in accordance with the declaration of right by a competent Court of civil jurisdiction under Chapter VI of the Specific Relief Act, 1963. Section 8(2) in no manner contemplates amendments or updating of the records based on decree for declaration of title in respect of any land. Section 8(2) does not deal with any rights in land. It deals with possession of right of an entry made in any record of rights and the remedy whenever such right is invaded or denied by other person.

11. In such view of the matter, we find it difficult to accept the submission that Rule 27(4) runs counter to Section 8(2) of the Act.

12. In our considered opinion, Rule 27(4) is required to be read along with Section 4 of the Act which provides for intimation of acquisition of rights in land by succession, survivorship, decree of a Court. Rule 27(4) deals with a situation where intimation is given by person of acquisition of tile by purchase of land through deeds on plain paper or by oral purchase, based on which a decree has been granted by the civil Court whenever such application is presented to the Mandal Revenue Officer for implementing and incorporating changes in the record of rights and pattadar pass books. Based on such decree, the Mandal Revenue Officer shall incorporate changes in the record of rights but only after collection of the stamp duty and registration fee on the sale price of the land or the market value of the land whichever is higher. The contention that the Mandal Revenue Officer cannot sit in appeal over the decree granted by the civil Court is misconceived. The Mandal Revenue Officer is bound to incorporate necessary changes based on the decree granted by the civil Court but only after collecting the necessary stamp duty and registration fee on the sale price of the land or the market value of the land whichever is higher. Such collection of stamp duty and registration fee is confined only to such decrees where such acquisition is based upon purchase of land through deeds on plain paper or by oral purchase. As noticed above, Section 8(2) of the Act in no manner deals with acquisition of title by purchase of land through deeds on plain paper or by oral purchase. Section 8(2) recognizes the rights of person in possession of entries made in their favour in record of rights and provides remedy whenever his title to such right is denied or infringed. In the circumstances, we find no merit in the submission.

13. The next question that falls for consideration is whether Rule 27(4) is ultra vires and beyond the scope of the Rule making power conferred upon the Government u/s 11 of the Act?

14. Section 11 of the Act reads as follows:

"Powers to make rules:-- (1) The Government may by notification and after previous publication, make rules for carrying out all or any of the purposes of this Act.

(2) In particular, and without prejudice to the generality of the forgoing powers,

such rules may provide for:

(a) regulating the manner of preparation, compilation, maintenance and amendment of the record of rights and prescribing the forms in which they are to be compiled or maintained, the places at which and the officer by whom such record of rights have to be maintained and the officer by whom the said records are to be verified and amended.

(b) The maintenance of other records, registers, accounts, maps and plans to be maintained for the purpose of this Act and the manner and forms in which they shall be prepared and maintained;

(bb) regulating the manner of preparation, issue, maintenance and renewal of title deeds and pass books.

......"

15. That a plain reading of Section 11 makes it abundantly clear that the Government is conferred with power to make rules for carrying out all or any of the purposes of the Act and such Rules may provide for the manner of preparation, compilation, maintenance and amendments of record of rights and other records for the purposes of the Act. It is entitled to regulate the procedure and the manner of preparation, compilation, maintenance and amendment of record of rights. The Government in exercise of its rule making power is entitled to make comprehensive rules that may have a bearing on every conceivable aspect concerning preparation, maintenance, amendment and updating of record of rights. Amendments and updating of records include the amendments to the entries made in the record of rights based on acquisition of title by purchase of land through deeds on a plain paper or by oral purchase where no stamp duty and registration has been paid but Court decree has been granted. Rule 27(4) deals with updating and amending entries made in the record of rights and pattadar pass books based on Court decree but only after collection of stamp duty and registration fee on the sale price of the land or the market value of the land whichever is higher. The rule essentially deals with updating and amendment of entries made in the record of rights and pattadar pass books.

16. In the circumstances, we find it difficult to accept the submission based on Section 11 of the Act. The impugned rule is intra vires and suffers from no infirmity.

17. Attack based on Section 2(10) of the Indian Stamp Act, 1899 and Section 17(f) of the Indian Registration Act, 1908.

18. It was further contended that decree passed by a civil Court declaring title to any land in a suit filed in that respect or any decree passed by the civil Court is not a sale or transfer of immovable property and therefore, exempt from registration u/s 17(2)(vi) of the Registration Act, 1908 nor the same is "conveyance" within the meaning of Section 2(10) of the Indian Stamp Act, 1899. Learned counsel sought to derive support from the fact that Section 2(10)

of the Indian Stamp Act, 1899 and Section 17(1)(f) and 17(2)(vi) were subsequently amended by Act 8 of 1998 and A.P Act No. 4 of 1999 respectively and for the first time, all decrees or orders passed by a civil Court which may even be declaratory in their nature are also brought within the sweep of definition "conveyance" and making the registration of the same as compulsory. The sum and substance of the submission was that prior to the amendments referred to hereinabove, there was no requirement in law for payment of any stamp duty and registration under the provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908 respectively. The impugned rule is repugnant to the said provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908, is the submission.

19. Whether Rule 27(4) of the Rules is repugnant to the provisions of Section 2(10) of the Indian Stamp Act, 1899 and Section 17(1)(f) of the Registration Act, 1908?

20. Before we proceed to consider the submission, it would be appropriate to notice the relevant Articles of the Constitution and they read as follows:

"245. Extent of laws made by Parliament and by the Legislature of States

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

246. Subject-matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in Schedule VII (in this Constitution referred to as the ''Union List'').

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in Schedule VII (in this Constitution referred to as the ''Concurrent List'').

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in Schedule VII (in this Constitution referred to as the ''State List'').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State:

PROVIDED that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

21. The above Articles occur in Part-XI of the Constitution of India which deals with relations between the Union and the States.

22. It has been repeatedly pointed out by the Supreme Court that the entries in the three lists in the VII Schedule are mere legislative heads and that it is quite likely that very often they over lap.

23. The question of repugnancy arises only in connection with the subjects enumerated in List III i.e. to say Concurrent List in respect of which both the Union and the State Legislatures have a concurrent legislative power. Wherever such a situation arises, the issue may be resolved by applying the doctrine of pith and substance.

24. In HOECHST PHARMACEUTICALS LTD. v. STATE OF BIHAR1, the Supreme Court interpreting Article 254 of the Constitution of India observed:

" We find it difficult to subscribe to the proposition advanced on behalf of the appellants that merely because of the opening words of Article 246(3) of the Constitution "subject to clauses (1) and (2)" and the non obstante clause in Article 246(1) "notwithstanding anything in clauses (2) and (3)", sub-section (3) of Section 5 of the Act which provides that no dealer shall be entitled to collect the amount of surcharge must be struck down as ultra vires the State legislature inasmuch as it is inconsistent with Paragraph 21 of the Drugs (Prices Control) Order issued by the Central Government under sub-section (1) of Section 3 of the Essential Commodities Act which enables the manufacturer or producer of drugs to pass on the liability to pay sales tax to the consumer. The submission is that sub-section (3) of Section 5 of the Act enacted by the State legislature while making a law under Entry 54 of List II of the Seventh Schedule which interdicts that a dealer liable to pay surcharge under sub-section (1) of Section 5 of the Act shall not be entitled to collect it from the purchaser, directly trenches upon Union power to legislate with respect to fixation of price of essential commodities under Entry 33 of List III. It is said that if both are valid, then ex hypothesi the law made by Parliament must prevail and the State law pro tanto must yield. We are afraid, the contention cannot prevail in view of the well accepted principles."

25. The true principle applicable in judging the constitutional validity of Rule 27(4) of the Rules is to determine whether in its pith and substance, it is a law relatable to entry 45 of List II of the VII Schedule or not?

26. Act 26 of 1971 is essentially a law relating to preparation and maintenance of record of rights in law. We may now notice the relevant entry in our Constitution. Entry 45 of List II of the VII Schedule reads thus:

"Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues".

27. Entry 45 is not limited by or made subject to any entry in List I to some or other extent. The legislative competency of the State is not limited or restricted as it is not made subject to any entry in List I nor there is any entry bearing upon the subject in List III. Thus, the State enjoys exclusive legislative competency to make any law in respect of record of rights which includes maintenance of land records. In the allotted sphere, the State Legislature is supreme.

28. In pith and substance, Act 26 of 1971 and the Rules framed thereunder including the impugned Rule in no manner touches the provisions of the Indian Stamp Act 1899 and the Registration Act, 1908. The collection of stamp duty and registration fee on the sale price of the land or market value of the land is made condition precedent for implementing and incorporating changes in the record of rights and pattadar pass books based on acquisition of title by purchase of land through deeds on plain paper or by oral purchase based on which a decree has been passed by the civil Court and for no other purposes. That as long as no such request is made for incorporating or updating the records based on such Court decrees, the question of collection of stamp duty and registration fee does not arise. The impugned rule in substance regulates the procedure in the matter of implementation and incorporating changes in the record of rights and pattadar pass books.

29. Entry 6 in List III (Concurrent List) of the VII Schedule relates to transfer of property other than agricultural land; registration of deeds and documents. Likewise Entry 44 deals with stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty. The Union as well as the State Legislature has a concurrent power to make any legislation in respect of those entries. The question of repugnancy between law made by the State Legislature in respect of any entry specified in List II of VII Schedule and

the law made by the Union in respect of entries in List III does not arise.

30. For the aforesaid reasons, we find no merit in any of the submissions made by the learned counsel for the petitioner. The Writ Petition fails and shall accordingly stand dismissed. No order as to costs.

