

(2009) 04 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 26494 and 26956 of 2006

P. Bapo Row

APPELLANT

Vs

Chief Commissioner of Appeals and Others

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 — Section 10A, 4, 4(1), 4(2), 5(2)
Arbitration and Conciliation Act, 1996 — Section 34
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2009) 5 ALD 161 : (2009) 5 ALT 319

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; G.P., for Revenue for Respondent Nos. 1 to 4 and 12, D.V. Reddy, for Respondent No. 5, P. Sriraghu Ram, for Respondent Nos. 6 and 7, G.V.S. Krishna Kumar, Respondent Nos. 8 and 8, S.R. Sanku, for Respondent Nos. 10 and 11, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Both the writ petitions are filed by the same individual. The respondents are common. Though the subject-matter is one and the same, separate writ petitions had to be filed on technical grounds. Hence, they are disposed of through the common judgment.

2. The writ petitions were filed feeling aggrieved by two separate, but similar orders dated 31-10-2006 and 29-11-2006, passed by the Chief Commissioner of Appeals, 1st respondent herein, confirming the orders dated 19-08-2006 and 20-07-2005, passed by respondents 2 and 3, respectively. During the pendency of the writ petitions, the Special Deputy Tahsildar (Inams), the 4th respondent herein, passed an order dated 18-12-2006, implementing the orders passed by his superiors. The prayers in the writ petitions were amended to bring the said proceedings, within the purview of the writ petitions.

3. The matter arises under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short "the Act"). An Extent of Ac.3.56 cents of land in Sy. No. 24/1, corresponding to R.S. No. 24/2A in T.D. No. 1208 of Gopalapatnam Village, Visakhapatnam Rural Mandal, was notified as inam land. It was purchased by Paripudi Venkata Rao, grandfather of the petitioner herein. The 4th respondent granted ryotwari patta under the Act, in favour of Venkat Rao, vide proceedings dated 04-02-1961, in respect of the said land.

4. One Nagula Chinamutyalu, the ancestor of respondents 5 to 11, was cultivating the land, as tenant, Venkata Rao filed A.T.P. No. 1 of 1971 under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short "the Tenancy Act") before the Tahsildar, Visakhapatnam, for eviction of the tenant. The A.T.P. was allowed on 25-11-1971, and eviction of the tenant was ordered. The tenant, in turn, filed O.S. No. 934 of 1973, in the Court of IV Additional District Munsif, Visakhapatnam, for injunction against Venkata Rao, as regards the same land. The suit was dismissed on 30-06-1980. Venkata Rao filed another suit for recovery of possession. Ultimately, the tenant was evicted and possession of the land was delivered to Venkata Rao.

5. Challenging the ryotwari patta granted in favour of Venkat Rao, on 04-02-1961, the tenant filed revision under the Act before the Revenue Divisional Officer, the 3rd respondent, in the year 1988, and it was dismissed on 26-12-1990. A further revision filed before the Director of Settlements and Land Records, by the tenant, was allowed on 24-01-1994, on the ground that the tenant was not issued notice, and the matter was remanded to the 3rd respondent. Thereupon, Venkata Rao filed Writ Petition No. 5255 of 1994, challenging the said order. That was dismissed by a learned single judge of this Court, on 14-09-1998. During the pendency of the Writ Appeal No. 1922 of 1998, Venkata Rao, as well as the tenant died. Their legal representatives were brought on record. However, the writ appeal was dismissed as abated, since steps as regards some of the deceased parties were not taken. It is stated that an application to set aside the abatement is pending.

6. After the dismissal of the writ petition and writ appeal, the 3rd respondent passed an order dated 15-02-2003, holding that the land in question was an inam land in an inam village, and accordingly remanded the matter to the 4th respondent, for consideration of the matter afresh, u/s 4(1) of the Act. While the matter was pending before the 4th respondent, on remand by the 3rd respondent, the legal representatives of the tenant filed an application, claiming benefit u/s 10-A of the Act. The application was allowed on 20-07-2005. The petitioner filed an appeal against the said order before the District Revenue Officer, the 2nd respondent. The appeal was dismissed on 19-08-2006. Thereupon, the petitioner, as well as his paternal uncle filed revisions before the 1st respondent. Those revisions were dismissed on 30-10-2006 and 29-11-2006 respectively. Those orders were implemented by the 4th respondent, vide

proceedings dated 18-12-2006. The two writ petitions are filed against the said bunch of orders.

7. The petitioner contends that the very application filed u/s 10-A of the Act by the respondents 5 to 11 before the 3rd respondent was untenable, inasmuch as it was barred by limitation, and that there is no provision for condonation of delay. It is stated that even assuming that the land was in a zamindari village, the tenant did not possess right of permanent occupancy, as is evident from the orders of eviction passed against him, and that the 3rd respondent did not undertake any enquiry, worth its name, before allowing the application. He further contends that the proceedings dated 18-12-2006, which issued by the 4th respondent are solely based upon the orders dated 20-07-2005, passed by the 3rd respondent, cannot be sustained in law.

8. The contesting respondents filed counter-affidavits. According to them, the Revenue Court, viz., the 3rd respondent, examined the application u/s 10-A, with reference to the relevant provisions of the Act, and the order passed by him does not suffer from any illegality or infirmity.

9. Heard Sri O. Manohar Reddy, learned Counsel for the petitioner submits that it is not at all competent for the 3rd respondent to entertain application u/s 10-A of the Act, after the stipulated period of limitation. He contends that even otherwise, the respondents 5 to 11 were not entitled for the benefit of that provision, since there did not exist any permanent tenancy. Learned Counsel further submits that the 4th respondent did not examine the matter from the correct perspective, and had issued ryotwari patta in favour of respondents 5 to 11 over a substantial extent of land, contrary to the provisions of the Act.

10. Learned Government Pleader for Revenue, and Sri P. Sriraghu Ram, learned Counsel for respondents 5 to 11, on the other hand, submit that Section 10-A was introduced by the Legislature with an object of conferring benefit upon the tenants, and there is no prohibition against entertaining the applications beyond the stipulated period. They contend that the 3rd respondent was satisfied about the fulfillment of conditions under that provision, and the respondents 1 and 2 have agreed with the same.

11. A dispute between a landholder and tenant in respect of the land, referred to above had assumed different dimensions over the past 3 ? decades, and has given rise to fairly large number of proceedings, before one forum or the other. It is not necessary to elaborate the facts, that gave rise to the filing of these writ petitions, since they have been mentioned within the permissible limits of brevity, in the preceding paragraphs.

12. The ryotwari patta, issued in favour of the landholder, Sri P. Venkata Rao, in the year 1961, was challenged about 2 ? decades later, by the tenant, that too, after he was evicted from the land, through the process of law. The revision was dismissed by the 3rd respondent. A further revision, to the Director of Settlements, was allowed and he remanded the matter to the 3rd respondent

herein. The efforts of the landholder to challenge the said proceedings before this Court, did not fructify.

13. The 3rd respondent passed an order dated 15-02-2003, remanding the matter to the 4th respondent for fresh consideration and disposal, in accordance with the directions given therein. The petitioner did not make any grievance, vis-a-vis the said order.

14. Long after the revision was disposed of by the 3rd respondent, on 15-02-2003, respondents 5 to 11 filed an application u/s 10-A of the Act. This was entertained by the 3rd respondent, in his capacity as Revenue Court, and not as an Authority, to whom a revision u/s 7 of the Act was provided for. He allowed the application on 20-07-2005. It is this order, that has given rise to various proceedings, that are challenged in this writ petition.

15. To appreciate the legality and correctness of the order dated 20-07-2005, passed by the 3rd respondent, it becomes necessary to have an overview of the Act. It provides for notification of villages or lands as Inams and the consequences thereof. The principal object is to grant ryotwari pattas on occupants of inam lands, subject to certain conditions. A clear distinction is maintained between the inam lands in ryotwari or zamindari villages, on the one hand, and inam lands in inam villages, on the other hand. It is only in the case of the latter category, that sharing or division is provided for between the landholder and his tenant, if one exists. This is evident from Section 4 of the Act. It reads,

Section 4: Conversion of inam lands into ryotwari lands:

(1) In the case of an inam land in a ryotwari or zamindari village the person or institution holding such land as inamdar on the date of commencement of this Act shall be entitled to a ryotwari patta in respect thereof.

(2) In the case of an inam land in an inam village-

(a) if such a land is held by any institution on the date of commencement of this Act, such institution shall be entitled to a ryotwari patta in respect of that land;

(b) if such a land is held by an inamdar other than an institution on the date of commencement of this Act, and is in his actual occupation on the said date, the tenant who is declared to be in occupation of that land on the 7th January, 1948, by the Revenue Court under Sub-section (5) of that section, as the case may be, shall be entitled to a ryotwari patta for two-thirds share of that land and the inamdar shall be entitled to a ryotwari patta for the remaining one-third share thereof, and if no tenant has filed an application before the Revenue Court under Sub-section (2) of that section within the period specified therein, the inamdar shall be entitled to a ryotwari patta in respect of that land;

(c) if such a land is held by an inamdar other than an institution on the date of commencement of this Act, but is in the occupation of a tenant on the said date,

the tenant who is declared to be in occupation of that land on the 7th January, 1948, by the Revenue Court under Sub-section (3) of Section 5, or the Collector under Sub-section (5) of that section, as the case may be, shall be entitled to a ryotwari patta of two-thirds share of that land and the inamdar shall be entitled to a ryotwari patta for the remaining one-third share thereof and if no tenant has filed an application before the Revenue Court under Sub-section (2) of that section within the period specified therein the tenant in the occupation of the land on the date of commencement of this Act, shall be entitled to a ryotwari patta for two-thirds share of that land and the inamdar shall be entitled to a ryotwari patta for the remaining one-third share thereof.

(3) The one-third share of the inam land in occupation of the tenant in respect of which the inamdar is entitled to a ryotwari patta under Clause (b) or Clause (c) of Sub-section (2) shall be deemed to be the compensation payable to the inamdar in lieu of the extinguishments of his rights in the two-thirds share of such land.

16. It is no doubt true that Venkata Rao was granted ryotwari patta on the assumption that the subject-matter of the land was inam land, in an inam village, obviously covered by Sub-section (2) of Section 4 of the Act. The fact however remains that no application was made claiming benefit u/s 10-A of the Act, by the time the patta was granted.

17. Originally, the Legislature did not confer any right to a tenant, in respect of an inam land, in ryotwari or zamindari village. It was only through Act of 20 of 1975, by introducing Section 10-A in to the Act, that such rights were conferred, of course, subject to certain conditions. The provision reads as under:

Section 10-A: Application of the Act to Inam lands In ryotwari or Zamindari Villages:- Notwithstanding anything contained in this Act where the Revenue Court either suo motu or on an application made to it within a period of six months from the date of commencement of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Amendment Act, 1975, is satisfied, after making an enquiry, that a tenant of any inam land in a ryotwari or Zamindari village has possessed the right of permanent occupancy in that land by virtue of any custom or usage having the force of law or any judgment, decree or order of a competent Court it may make a declaration to the effect and on such declaration the provisions of this Act shall apply to such inam land as if such inam land is in an inam village;

Provided that where a ryotwari patta has already been granted to the inamdar in respect of any inam land in any ryotwari or zamindari village prior to the commencement of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Amendment Act, 1975, any tenant of such land who, on the date of such grant, possessed the right of permanent occupancy in that land by virtue of any custom or usage having the force of law or any judgment, decree or order of a competent Court, shall, notwithstanding such grant,

continue to possess the said right.

(2) Any person or institution aggrieved by an order of the Revenue Court under Sub-section (1), may appeal to the Collector within sixty days from the date of communication of such order and the Collector may after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders on the appeal as he thinks fit.

18. From a reading of this provision, the following becomes evident:

(a) An application seeking benefit under this provision must be made within six months from the date of commencement of Act 20 of 1975:

(b) After conducting enquiry, the Revenue Court may record a finding to the effect that a tenant of inam land, in a ryotwari or zamindari village possessed "the right of permanent occupancy" in the land, and

(c) If a finding is recorded to that effect, the provisions of the Act shall apply to such inam land, as if it is in an inam village.

19. The order passed by the 3rd respondent on 20-07-2005 cannot be sustained for more reasons than one: Firstly, the application u/s 10-A was made by respondents 5 to 11 only in the year 2005, i.e. 20 years after Section 10-A was introduced. The period of limitation stipulated in Section 10-A, is, six months flat, and there is provision for condonation of delay. Nowhere in the impugned order that the 3rd respondent bestowed his attention to this question, though a specific plea was raised by the petitioner. It hardly needs any mention that with the expiry of limitation for availing remedy of appeal or revision against an order passed by a Court or authority, a valid right accrues to the person in whose favour it was passed. Equally settled is the principle that the delay in availing a statutory remedy cannot be condoned unless such a power is vested by the concerned enactment.

20. Admittedly, Section 10-A of the Act does not provide for extension of the period, within which an application can be made under it. It is true that Section 29(2) of the Limitation Act mandates that the provisions of Sections 4 - 24 of that Act shall apply even where the limitation is prescribed by a special enactment, in case the said provisions are not expressly excluded by such law. In *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, , the Hon'ble Supreme Court held that it is not necessary that the provisions of Sections 4 to 24 must be expressly excluded, and that such an intention can be gathered from the relevant provisions of the special enactment. The Supreme Court held,

Para-17: It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is, in this case the Act, and the nature of the remedy provided therein are such that the

Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 - 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation....

This principle was reiterated by the Supreme Court recently, in *M.R.K. Sarma Vs. State of A.P. and others*, , while interpreting Section 34 of the Arbitration and Conciliation Act, 1996. In that Section, there exists a provision for condonation of delay, akin to Section 5 of the Limitation Act, may be to a limited extent. No such provision is there, u/s 10-A of the Act.

21. Assuming that Section 5 of the I Limitation Act applies to an application made u/s 10-A, the fact remains that the delay involved was, more than 20 years. Neither such an enormous delay can be condoned, nor the suo motu powers could have been exercised after lapse of such a long time. Viewed from any angle, the action of the 3rd respondent in entertaining the application u/s 10-A, made by the respondents 5 to 11, cannot be sustained in law.

22. Secondly, assuming that the application was otherwise tenable, no finding was recoded to the effect that the tenancy, in favour of the ancestor of respondents 5 to 11, was permanent in character. Except issuing a direction, that the possession of the respondents 5 to 11 be restored, u/s 4(2) of the Act, nowhere in his order the 4th respondent held that, there existed a "right of permanent occupancy" over the land in favour of the tenant, which is an essential condition u/s 10-A of the Act. As a matter of fact, the order of eviction passed by the Tribunal, under the Tenancy Act, and the resultant eviction of the tenant suggests that the tenancy was not permanent. The record discloses that the tenancy was only for two years. Therefore, the order dated 20-7-2005, passed by the 3rd respondent cannot be sustained, either on facts or in law.

23. The 4th respondent based his conclusions in his orders dated 18-12-2006, mainly upon the order dated 20-07-2005, passed by the 3rd respondent. It was not noticed that under Clause (b) of Section 4(2), a tenant can be conferred with ryotwari patta (b) of Section 4(2), a tenant can be conferred with ryotwari patta for two-thirds share, if only he was in occupation of the land as on 07-01-1948. The record discloses that Venkata Rao purchased the land in the year 1955, and there existed an arrangement between himself and the tenant, for cultivation of the land, for a period of two years. Therefore, the whole exercise undertaken by the 4th respondent becomes untenable. The matter needs to be reconsidered purely on the basis of the order dated 15-02-2003 passed by the 3rd respondent, through which, he remanded the case to the 4th respondent. The order dated 20-07-2005, extending the benefit u/s 10-A of the Act must be

eschewed from consideration.

24. For the foregoing reasons, the writ petitions are allowed:

(a) setting aside the order dated 20-07-2005, u/s 10-A of the Act, passed by the 4th respondent as well as the orders passed by the respondents 2 and 1 in appeal and revision against it. The consequential order dated 18-12-2006 passed by the 4th respondent is also set aside.

(b) The 4th respondent shall consider the matter afresh, strictly in terms of Section 4(2) of the Act, and without conferring any benefit u/s 10-A of the Act, upon respondents 5 to 11, and pass orders within three months from the date of receipt of a copy of this order, after hearing both the parties.

25. There shall be no order as to costs.