(2003) 11 AP CK 0067

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3221 of 2003

P. Monish Gajapathi Raju and Others APPELLANT

Vs

The Authorised Officer, Land Reforms and Another RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 220(6), 254, 255(5), 27, 7(1)
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 15
Constitution of India, 1950 — Article 227

Citation : (2004) 1 ALD 835

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : K. Sai Ram Murthy, for the Appellant; G.P. For Land Ceiling, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard Sri K.Sai Ram Murthy, Counsel representing the petitioners and the Government Pleader for Land Ceiling, the Counsel representing the 1st respondent.

2. The petitioners had preferred the present Civil Revision Petition under Article 227 of the Constitution of India aggrieved by an order made in I.A.No.1177/2003 in L.R.A.No.1/2003 made on 30-6-2003 on the file of District Judge, Vizianagaram.

3. The 2nd petitioner herein Smt.P.Madhuri Gajapathi Raju, had sworn to the affidavit filed in support of the application under Rule 15(4) of A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules 1974, hereinafter in short referred to as "Rules". It is stated by the deponent that she is the 2nd appellant in the Appeal and appellants 1 and 3 are her sons and the 2nd respondent is her daughter. It is also stated that her late husband was the principal land holder of Vizianagaram estate and he was entitled to 4/5th share in all patta lands and 1/5th share

belonging to the maintenance holders under the Estates Abolition Act, 1948. He filed a declaration in L.C.C.No.10 of 1975 of S.Kota. Similarly, her children and the deponent also gave declarations in L.C.C.Nos.6, 7, 8 and 9 of 1975 S.Kota on the basis of the Arbitration Award dated 28-6-1971. It is further stated that all these declarations were clubbed together all through and common orders are being passed by various Tribunals. After the disposal of the L.C.Cs. by the Land Reforms Tribunal, the Revenue Divisional Officer, Vizianagaram after remand by its order dated 15-3-2003, the petitioners/appellants preferred L.R.A.No.1/2003 to the Appellate Land Reforms Tribunal as the Primary Tribunal committed several basic errors in total disregard to the provisions of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, hereinafter referred to in short as "Act". It was further stated that various grounds had been raised in the Appeal and to avoid repetition the Grounds of Appeal may be read as part and parcel of the said affidavit. The learned District Judge, Vizianagaram had dismissed the said I.A.No.1177/2003 in L.R.A.No.1/2003 filed under Rule 15(4) of the Rules wherein stay of operation of the orders dated 15-3-2003 was prayed for observing that the learned Government Pleader contended that there is no provision for grant of stay in the proceedings under the Act and also on the ground that the Primary Tribunal issued notification u/s 7(1) of the Act to file the statement of lands to be surrendered on or before 16-7-2003 and therefore no stay can be granted.

4. Sri K.Sai Ram Murthy, the learned Counsel representing the petitioners had pointed out to the contents of the affidavit filed in support of the application sworn to by the 2nd petitioner herein Smt.P.Madhuri Gajapathi Raju. The learned Counsel also had drawn the attention of this Court to the Grounds of appeal filed by the petitioners/appellants in this regard. The learned Counsel pointed out that as can be seen from the Grounds of Appeal, several arguable questions had been raised and though there is urgency for grant of stay as the Primary Tribunal already issued notice u/s 7(1) of the Act to surrender the excess land on or before 16-7-2003, the learned Judge totally erred in refusing to grant stay though such power is available to the Appellate Tribunal. The learned Counsel also maintained that this power to grant stay is an incidental power and even if no such specific power had been conferred, the same can be granted. Strong reliance had been placed on I.T. OFFICER Vs. MOHD. KUNHI AIR 1969 S.C. 430.

5. Per contra, on behalf of the 1st respondent, the learned Government Pleader for Land Ceiling contended that this is only a discretionary order since pending Appeal the Appellate Tribunal had refused to grant stay and hence this Court while exercising powers under Article 227 of the Constitution of India cannot interfere with such a discretionary order made by the Appellate Tribunal.

6. It is pertinent to note that the Rules were framed while exercising powers u/s 27 of the Act. Rule 15 of the Rules deals with Appeal and Rule 15(4) of the Rules specifies that the Appellate Tribunal may, pending disposal of Appeal, stay the orders of the Tribunal or Revenue Divisional Officer appealed against. Hence, it

cannot be said that the Appellate Tribunal has no power to grant stay. In the decision referred (1) supra, while dealing with power of the Appellate Tribunal to grant stay, though it is not specifically provided for under the Income Tax Act, the Apex Court held:

"An express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective.

Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. But the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. When Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory."

7. The same view was expressed in P.NARAYANA RAO Vs. COMMISSIONER OF INCOME TAX, HYDERABAD, AIR 1957 A.P. 672 and Themmalapuram Bus Transport Ltd. Vs. The Regional Transport Officer, Malabar and Another, . It is no doubt true that granting stay or refusing stay in a matter is within the discretion of the Appellate Tribunal, but the exercise of discretion always should be judicious and based on settled principles of law. As can be seen from the impugned order, the learned Judge having recorded that the notification u/s 7(1) of the Act to file statement of lands to surrender on or before 16-7-2003 had been issued, refused stay of the operation of the order of the Tribunal, during the pendency of the Appeal. In my considered opinion the impugned order cannot be sustained since there is no judicious exercise of the power while passing the same. It is also pertinent to note that though specific provision is there under Rule 15(4) of the Rules empowering the Appellate Tribunal to grant stay, observing that there is no provision for grant of stay of such proceedings, in my considered opinion, also cannot be sustained. Viewed from any angle, the learned District Judge had not exercised the discretion properly and refusing the relief of stay when the main Appeal is pending before the Appellate Tribunal, definitely is bad in law.

8. Now, the question is whether this Court while exercising the powers under Article 227 of the Constitution of India can interfere with such an order. As already specified by me supra, it is no doubt true that it is a discretionary order,

but at the same time, an Appeal had been preferred before the appellate Tribunal questioning the order of the Primary Tribunal on various grounds and in fact a notification u/s 7(1) of the Act to file statement of land to surrender on or before 16-7-2003 also had been issued. Though there was urgency in the matter, the learned Judge had refused to grant stay. This court had granted interim stay in C.M.P.No.15574/2003 on 18-7-2003 while admitting this Civil Revision Petition. While exercising jurisdiction, when an order is made either in ignorance of or in flagrant violation of a statutory provision or a Rule, I am of the considered opinion that such a matter, as the one on hand, will be a fit matter where this Court may have to interfere under Article 227 of the Constitution of India. Hence, I am of the considered opinion that the learned District Judge definitely had adopted totally a wrong approach and had committed an illegality in refusing stay of further proceedings pending appeal L.R.A.No.1/2003 on his file.

9. In view of the same, the impugned order is set aside and stay of all further proceedings as prayed for is hereby granted till disposal of the Appeal. Accordingly, the civil Revision Petition is allowed. No costs.

