

(2009) 10 AP CK 0012
In the Andhra Pradesh High Court
Case No : Writ Petition No. 22643 of 2005

Pathipati Rangamma

APPELLANT

Vs

Agent to the Government (District Collector) and Others

RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Andhra Pradesh (Ceiling on Agricultural Holdings) Act, 1961 — Section 10
Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 5A, 5A(4)
Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 — Rule 22(5)
Andhra Pradesh Scheduled Areas Land Transfer Act, 1959 — Section 3, 3(1), 3(2)
Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 — Regulation 1
Constitution of India, 1950 — Article 226, 244(1)
Hyderabad Tenancy and Agricultural Lands Act, 1950 — Section 47, 50B
Transfer of Property Act, 1882 — Section 53A

Citation : (2010) 4 ALD 769 : (2010) 5 ALT 249 : (2009) 4 APLJ 115

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : M. Sudhir Kumar, for the Appellant; P. Murali Krishna Prasad, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—The petitioner herein claims to have purchased agricultural land to an extent of Ac. 13.33 guntas situated in Sy. No. 83 of Tatkoor Village, Velairpadu Mandal, Khammam District from the 4th respondent under an un-registered sale deed dated. 15.05.1968. It is stated that since the date of purchase she has been in possession and enjoyment of the said land by paying the land revenue and even mutation has taken place in the revenue records in accordance with the provisions of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short "ROR Act, 1971"). That apart the MRO, Velairpadu Mandal after making necessary enquiry and after receiving the required fee, regularized the transaction in favour of the petitioner and issued a sale certificate in Form-XIII (B) u/s 5A(4) of ROR Act, 1971 read with Rule 22(5)(ii) of A.P. Rights in Land and Pattadar Pass Books Rules, 1989.

2. While so, on a complaint made by the respondents 5 and 6 herein, alleging that the transfer of the said property in favour of the petitioner was in contravention of Section 3(1) of A.P Scheduled Areas Land Transfer Regulation, 1959 (for short Regulation 1 of 1959), the 2nd respondent-Special Deputy Collector, Tribal Welfare by order dated. 10-03-2005 ordered ejectment of the petitioner and directed restoration of the said property to the complainants. Though the petitioner preferred an appeal being C.M.A. No. 6 of 2005 before the 1st respondent herein, the same was dismissed by order dated. 18-08-2005. Aggrieved by the same, the present writ petition is filed seeking a writ of Certiorari to call for the records relating to the order of the 1st respondent dated. 18.08.2005 in C.M.A. No. 6 of 2005 confirming the order of the 2nd respondent dated. 10-03-2005 and to quash both the orders being arbitrary and illegal.

3. I have heard Sri M.R.K. Chowdary, the learned Senior Counsel appearing for the petitioner as well as the learned Government Pleader for Tribal Welfare appearing for the respondents 1 and 3 and perused the material on record. Despite notice, the respondents 4 to 6 did not choose to appear.

4. It is not in dispute that the land in question is a notified scheduled area governed by the provisions of the Regulation 1 of 1959 as amended by Regulation 1 of 1970. The fact that the writ petitioner as well as her vendor (4th respondent herein) are non-tribals is also not in dispute.

5. Section 3 of Regulation 1 of 1959 as substituted by Regulation 1 of 1970 declares that any transfer of immovable property situated in the agency tracts by a person whether or not such person is a member of a Scheduled Tribe shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of Scheduled Tribe. According to Section 3(1)(b) unless the contrary is proved, a presumption shall be drawn that any immovable property situated in the agency tracts and in the possession of a person who is not a member of Scheduled Tribe has been acquired by him or his predecessor in possession through a transfer made by a member of a Scheduled Tribe.

6. In the case on hand, the Special Deputy Collector, Tribal Welfare after holding the enquiry as provided under Regulation 1 of 1959 and the Rules made there under, concluded that the transfer of the property in question in favour of the petitioner was in contravention of Section 3(1) of Regulation 1 of 1959. On the basis of a report received from the MRO, Velairpadu dated 04-02-2005 it was also held by the Special Deputy Collector that the name of the writ petitioner was entered as possessor in the revenue records only from the year 1987-88. While recording a further finding that the petitioner had purchased the land in question during the year 1988 after enforcement of Regulation 1 of 1970, it was also held by the Special Deputy Collector that the ROR pass books and title deed issued to the petitioner were concocted and that the ROR(1)(b) Register was tampered and the name of the writ petitioner was entered without any valid records. It was also observed that no enquiry as such was conducted u/s 5A of the ROR Act, 1971 and that the writ petitioner was in possession and enjoyment of the land

situated in agency area by tampering the revenue records with the help of revenue authorities. Accordingly, by order dated 10.03.2005 the 2nd respondent ordered ejectment of the petitioner and directed that the property in question shall be restored to the respondents 5 and 6 herein.

7. While confirming all the said findings, the 1st respondent-Appellate authority held that the transfer of the land in question which was made in between two non-tribals after the promulgation of Regulation 1 of 1970 on 3-2-1970 was in clear violation of Regulation 1 of 1959 as amended by Regulation 1 of 1970. Accordingly the order of ejectment passed by the Special Deputy Collector was upheld. However having taken note of the fact that the respondents 5 & 6 herein, on whose complaint the ejectment proceedings were initiated, failed to establish their possession and title over the land at any point of time, the 1st respondent while setting aside the direction to handover the land in question to the respondents 5 & 6 ordered that the Mandal Revenue Officer shall take possession of the said land and take necessary action for assignment to the tribals as per the Rules in force.

8. The said orders are assailed in this writ petition primarily on the ground that the sale transaction in favour of the petitioner which was regularized by the competent authority under the ROR Act, 1971, cannot be disregarded by the 2nd respondent and at any rate while exercising the powers conferred under Regulation 1 of 1959, the 2nd respondent cannot set at naught the findings recorded by the competent authority under ROR Act, 1971.

9. Article 244(1) of the Constitution of India which is included in Part-X dealing exclusively with the scheduled and tribal areas, provides that the provisions of the Fifth Schedule to the Constitution shall apply to the administration and control of the scheduled areas and scheduled tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. Paragraph-5 (1) of the Fifth Schedule to the Constitution of India empowers the Governors of the States to direct by public notification that any particular Act of the Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as may be specified in the notifications. Paragraph-5(2) empowers the Governors of the States to make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. In exercise of the said powers conferred by Paragraph-5(2) of the Fifth Schedule to the Constitution of India, the Governor of Andhra Pradesh, with the assent of the President, made A.P. Scheduled Areas Land Transfer Regulation, 1959, to regulate the transfers of land in the scheduled areas of the East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahaboobnagar Districts of Andhra Pradesh.

10. Section 3 of Regulation 1 of 1959 as amended by Regulation 1 of 1970 which prohibits transfer of immovable property by a member of Scheduled Tribe runs as under:

3. Transfer of immovable property by a member of a Scheduled Tribe:?

(1)(a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

(b) Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.

(c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government, and the Agent. Agency Divisional Officer or the prescribed officer, as the case may be, may by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961), and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed;

(2)(a) Where a transfer of immovable property is made in contravention of Sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by any one interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer or his heirs,

(b) If the transferer or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent, the Agency Divisional Officer or prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe or a society registered or deemed to be registered under any law relating to Co-operative Societies for the time being in force in the State composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of State Government.

(3)(a) Subject to such conditions as may be prescribed, an appeal against any decree or order under Sub-section (2), shall lie within such times as may be

prescribed?

- (i) if the decree or order was passed by the Agent, to the State Government;
- (ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and
- (iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.

(b) The appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time limit prescribed therefor.

(4) For the purpose of this section, the expression "transfer" includes a sale in execution of a decree and also a transfer made by a member of a Scheduled Tribe in favour of any other member of a Scheduled Tribe benami for the benefit of a person who is not a member of a Scheduled Tribe; but does not include a partition or a devolution by succession.

11. The non-obstante clause employed in Section 3(1)(a) makes it clear that the prohibition of transfer u/s 3(1) of Regulation 1 of 1959 has an overriding effect over all other enactments in force in the agency tracts. It is also clear that Section 3(1)(b) of Regulation 1 of 1959 enables to draw a presumption that the immovable property situated in the agency tracts and in possession of a non-tribal has been acquired through a transfer made to him by a member of scheduled tribe unless the contrary is proved. Thus the burden of proof is on the person who, is in possession of the land situated in the agency tracts to establish that his possession is not in contravention of Section 3(1)(a) of Regulation 1 of 1959.

12. So as to establish that the property possessed by her was not in contravention of Section 3(1)(a) of Regulation 1 of 1959, the petitioner in the instant case had produced a certificate issued in Form XIII(B) u/s 5A(4) of the ROR Act, 1971, under which the transfer in favour of the petitioner under the unregistered sale deed, dated 15.05.1968 was declared valid.

13. The learned Senior Counsel appearing for the petitioner vehemently contended that the said certificate in Form-XIII(B) regularizing the sale transaction in favour of the petitioner shall be an evidence of transfer in favour of the petitioner as provided u/s 5A(4) of the ROR Act, 1971 and the sale deed dated 15.05.1968 shall be deemed to be a registered conveyance deed for all purposes and consequently the prohibition of transfer of immovable property situated in the scheduled areas which is brought into force w.e.f. 3.2.1970 has no application to the transfer in favour of the petitioner. It is further contended that even if there is any irregularity or illegality in exercising the power by the competent authority u/s 5A of the ROR Act, 1971, the appellate or revisional authorities under the ROR Act, 1971 alone are empowered to set aside or vary the certificate in Form-XIII(B). Since the said certificate in favour of the petitioner has become final and has never been varied or set aside by the

appellate or revisional authorities under the ROR Act, 1971, according to the learned Senior Counsel the same is binding on the 2nd respondent while exercising the powers u/s 3(1)(a) of Regulation 1 of 1959.

14. It is also contended that the action of the 2nd respondent in disregarding the Certificate in Form-XIII(B) in favour of the petitioner amounts to usurpation of appellate or revisional jurisdiction conferred upon the authorities under the ROR Act, 1971 and therefore the impugned order of ejectment passed by the 2nd respondent as confirmed by the 1st respondent is without jurisdiction and is liable to be set aside on that ground alone.

15. On a careful consideration of the provisions of Regulation 1 of 1959 read with ROR Act, 1971, I do not find substance in any of the above contentions.

16. In view of the overriding effect given to Section 3(1)(a) of Regulation 1 of 1959, over all other enactments in force in the agency tracts, it is clear that the enquiry contemplated under Regulation 1 of 1959 is an independent enquiry. Hence it is for the person in possession of immovable property situated in agency tracts to establish by adducing acceptable evidence to the satisfaction of the Special Deputy Collector that his possession was not in contravention of Section 3(1)(a) of Regulation 1 of 1959. In the absence of such material, it is always open to the Authority to draw a presumption u/s 3(1)(b) of Regulation 1 of 1959.

17. It is to be noted that Regulation 1 of 1959 is a special legislation intended to protect the interest of the tribals. Having regard to the object and intendment of the legislation, an overriding effect has been given to its provisions over all other enactments in force in the agency tracts. It is also relevant to note that the provisions of Regulation 1 of 1959 constitute a complete Code in relation to the determination of the validity of transfer of immovable property in a Scheduled area. Hence, the authority empowered u/s 3(1)(a) of Regulation 1 of 1959 while enquiring into the validity of the transfer of any immovable property in a Scheduled area, has to arrive at an independent conclusion on the parameters of law contained in Regulation 1 of 1959 and for the said purpose he is not bound by the finding, if any, recorded under any other enactment with regard to such transfer.

18. A Full Bench of this Court in Gaddam Narsa Reddi and Ors. v. Collector, Adilabad and Ors. 1981 (2) APLJ 260, having considered an identical issue held as under:

...where a transfer contravenes the provisions of Section 3(1)(a) of the Regulation, it will not be saved even if it has been made in conformity with the relevant provisions of the Transfer of Property Act or the Indian Registration Act or the Hyderabad Tenancy and Agricultural Lands Act or any other law applicable - thereto. Thus, a person in possession of immovable property in agency tract by virtue of a transfer made in contravention of the provisions of Section 3(1)(a) would not be entitled to claim the benefit of Section 53-A of the Transfer of Property Act whether it conforms to the relevant provisions of the Transfer of

Property Act, Indian Registration Act or the Hyderabad Tenancy and Agricultural Lands Act. The authorities u/s 3(2)(a) of the Regulation are conferred special or exclusive jurisdiction to determine the limited question whether the transfer of immovable property situated in the agency tracts is made in contravention of the provisions of Section 3(1) of the Regulation, and any other question is outside the scope of such a proceeding u/s 3(2)(a) of the Regulation. In this view, it is not open to the authorities u/s 3(2)(a) to go into the question whether the sale or agreement to sell is registered or not, or whether the transferee under such a transfer is entitled to the protection of Section 53-A of the Transfer of Property Act in the absence of any prior permission u/s 47 of the Hyderabad Tenancy and Agricultural Lands Act or validation certificate u/s 50-B of the said Act.

19. Similar view has been expressed in later decisions in Kakarla Nageswara Rao and Others Vs. Government of A.P. and Others, *Ajru Nagarthnam v. Commissioner Survey Settlements And Land Records, Hyderabad* and Ors. 1997 (2) ALD 180, and *Vaddi Veeraiah v. The Agent to Government, Khammam* and Ors. 1996 (1) ALD 107.

20. In the circumstances, the mere fact that the competent authority under the ROR Act, 1971 had regularized the sale in favour of the petitioner dated 15.5.1968 under an unregistered sale deed will not operate as a bar to make an independent enquiry under Regulation 1 of 1959 with regard to the validity of the said sale transaction. Consequently, the protection, if any, given u/s 5A(4) of ROR Act, 1971 will not be available to the petitioner so far as the enquiry u/s 3(1) (a) of Regulation 1 of 1959 is concerned and if the competent authority under Regulation 1 of 1959 finds that the transfer is in contravention of the provisions of Section 3(1)(a) of Regulation 1 of 1959, such transfer will not be saved by virtue of the validation under the provisions of ROR Act, 1971.

21. In the instant case, the Special Deputy Collector found that the petitioner had failed to produce the land revenue receipts for the period from 1968-69 to 1987-88. Several interpolations and discrepancies were found in the revenue records as well as the certificate in Form-XIII(B). It was also found that the petitioner failed to produce the original certificate in Form-XIII(B) but only a photostat copy was produced. Even the Mandal Revenue Officer, Velairpadu, gave a report stating that the ROR Register was tampered and the name of the petitioner was entered without any valid records. In the circumstances, the 2nd respondent cannot be said to have committed any error in disregarding the certificate in Form-XIII(B) issued by the competent authority under the ROR Act, 1971 and recording an independent finding that the petitioner failed to prove her possession from 15.5.1968.

22. It is also relevant to note that as per Section 5A(4) of the ROR Act, 1971, the transfer is validated in favour of the transferee from the date of such certificate in Form-XIII(B) and notwithstanding anything in the Registration Act, 1908, it shall be evidence of such alienation or transfer as against the alienor or transferor or any person claiming interest under him. However, the Xerox copy of

the certificate issued by the Mandal Revenue Officer u/s 5A(4) of the ROR Act, 1971 in Form-XIII(B) which has been placed before this Court does not contain any date at all and there is no material to show from which date the transfer has been validated in favour of the transferee/petitioner. At any rate, even as per the language of Section 5A(4) of ROR Act, 1971, the said validation shall be evidence of such transfer only against the transferor or any person claiming interest under him. Hence, the said validation cannot be said to be binding so far as the enquiry u/s 3(1)(a) of Regulation 1 of 1959 is concerned and therefore on that ground also the action of the 2nd respondent in ignoring the certificate in Form-XIII(B) cannot be found fault with.

23. For the aforesaid reasons, the orders under challenge cannot be held to be without jurisdiction. So far as the correctness of the concurrent findings of fact recorded by the respondents 1 and 2 are concerned, the material on record manifests that the finding that the petitioner's possession has been substantiated only from the year 1988 is based upon the material available on record. Therefore, such concurrent finding of fact warrants no interference by this Court in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

24. Accordingly, the Writ Petition is dismissed. No costs.