
(1997) 09 AP CK 0042
In the Andhra Pradesh High Court
Case No : C.R.P. No. 337 of 1996

Putta Mangayamma and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 30-09-1997

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 12(5), 3, 8, 9

Citation : (1998) 4 ALD 379 : (1997) 6 ALT 86

Hon'ble Judges : Ramesh Madhav Bapat, J

Bench : Single Bench

Advocate : Mr. G. Krishna Murthy, for the Appellant; Government Pleader for Land Acquisition, for the Respondent

Judgement

1. The petitioners herein were aggrieved by the order passed by the Land Reforms Appellate Tribunal-cum-First Additional District Judge, Visakhapatnam in L.R.A.No.6 of 1993 which arises out of L.C.C. No. 1434/75/YLM decided by the Land Reforms Tribunal-cum-Revenue Divisional Officer, Narsipatnam wherein the first petitioner herein was directed to file her declaration u/s 18 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973.

2. The facts leading to this case can briefly be narrated as follows : That the first petitioner herein is the mother of petitioners 2 to 4 herein. The petitioners herein were holding land to certain extent. The father of the first petitioner was also holding land to certain extent. After coming into force the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 on 1-1-1975, both the parties i.e., the husband of the 1st petitioner herein and the father of the 1st petitioner herein, filed declarations u/s 8 of the said Act. The father of the first petitioner had made a Will bequeathing life interest on certain lands in favour of the first petitioner and the remainder was to go to the petitioners 2 and 4. The father of the first petitioner died after filing of the declaration and before finalisation of his standard holding and therefore the first petitioner was directed

to file declaration u/s 18 of the said Act.

3. The order passed by the Land Reforms Tribunal was confirmed by the Land Reforms Appellate Tribunal and therefore the present C.R.P., has been filed.

4. The only point arises for consideration of this Court whether the order passed by the Land Reforms Tribunal and as confirmed by the Land Reforms Appellate Tribunal is maintainable on facts as stated to above ?

5. It is not in dispute that the father of first petitioner named Kara Tatamma @ Papayya had filed a declaration in L.C.C.No.804/75/YLM u/s 8 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act No.I of 1973 and bequeathed the properties declared to his daughter Putta Mangayamma i.e., the first petitioner herein, by a Will dated 16-9-1968. She was given only life interest in the said properties. She was not the full owner of the said properties. Under these circumstances, whether she is required to file a declaration u/s 18 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act 1 of 1973. Section 18 of the said Act reads as under :

"18. Declaration of Future Acquisitions :

(1) Where on or after the notified date there takes place-

(a) any acquisition in any manner whatsoever, usufructuary mortgage, or lease of any land; or

(b) any marriage or adoption; or

(c) any alteration in the classification of the land;

and after such acquisition, usufructuary mortgage, lease, marriage, adoption or alteration, the total extent of land held by any person or by all the members of any family unit in the aggregate exceeds the ceiling area such person or family unit shall within a period of sixty days from the date of such acquisition, usufructuary mortgage, lease, marriage, adoption or alteration furnish a declaration of the holding of such person or family unit; and all the relevant provisions of this Act shall apply as if it was a declaration furnished u/s 8.

Explanation-1 :- For the purpose of this section, the number of members of a family unit shall be reckoned with reference to the date of such acquisition, usufructuary mortgage, lease, marriage, adoption or alteration, as the case may be.

Explanation-II :- For the purpose of the application of the provisions of Sections 9 and 17, the expression "notified date" shall be construed as the date of acquisition, usufructuary, mortgage, lease, marriage, adoption or alteration, as the case may be.

Explanation-III :- For the removal of doubts, it is hereby clarified that no declaration under this Section need be furnished where the total extent of land held by all the members of a family unit in the aggregate exceeds the ceiling

area solely on account of any reduction in the number of members of the family unit,

Explanation-IV:- Where a land surrendered by a family unit under this Act is land held by a joint family, it shall be open to the members of the joint family with and other members of the joint family to partition the land remaining with such joint family after such surrender and if such family unit comes to hold land in excess of the ceiling area solely on account of such partition, such family unit shall not be required to furnish a fresh declaration under this section and the relevant provisions of this Act applicable to a family unit holding land in excess of the ceiling area shall not apply to such family unit.

Explanation-V :- (1) For the removal of doubts, it is hereby clarified that when a land held by a limited owner reverts to the person having a vested interest in the remainder by virtue of sub-section (5-A) of Section 12 or otherwise, there shall be deemed to be an acquisition of such land by such person for the purpose of this section.

(2) Where any land is acquired or taken on lease by a person solely for a non-agricultural purpose connected with or incidental to an industry, the Government may, after making such enquiry as they may deem fit, by order, exempt, subject to such conditions, if any, as may be specified in order, such land from the provisions of sub-section (I);

Explanation :- For the purposes of this sub-section, the expression "non-agricultural purpose" means a purpose which is not an agricultural purpose or a purpose ancillary thereto, including horticulture; and the expression "industry" means any business, profession, trade, undertaking or manufacture."

6. Clause (a) of sub-section (1) of Section 18 of the said Act makes incumbent on the part of the land-holder to file declaration u/s 18 of the said Act if he acquires land in whatever manner, it may be usufructuary, mortgage, lease, marriage, adoption etc., as if it was a declaration u/s 8 of the said Act. Explanation-V to Section 18 of the said Act speaks about removal of doubts and states that the owner is to be understood subject to sub-section (5-A) of Section 12 of The said Act Sub-section (5-A) of Section 12 of the said Act reads as follows :

"5-A Where any land is surrendered or is deemed to have been surrendered under this Act by any limited owner, the possession of such land shall, subject to such rules as may be prescribed; revert to the person having a vested interest in the remainder and such person shall be liable to discharge the claim enforceable against the land by the limited owner, and the said land shall, if held as a security, continue to be the security. (Sub-section 5-A is added as per Amendment Act No.10 of 1977)."

7. The learned Counsel for the petitioners herein further brought to my notice the definition of "holding" which reads as under :

"Section 3(i) "holding" means the entire land held by a person, as an owner; as a limited owner; as an usufructuary mortgage and as a tenant."

8. The learned Counsel for the petitioners herein further brought to my notice the provisions contained in clause (n) of Section 3 of the said Act which was introduced by an Act 10 of 1977 and which came in force with effect from 1-1-1975. It specifically excludes the person having limited interest from filing declaration u/s 18 of the said Act after the person acquires limited interest in the property. Sub-clause (n) of Section 3 of the said Act reads as under :

" "owner" includes a person by whom or in whose favour a trust is created; (....) but does not include a limited owner; and in the case of any land not held under ryotwari settlement, a person who is or would be entitled to the grant of a Ryotwari patta or to the registration as an occupant in respect of such land under any law for the time being in force providing for the conversion of such land into ryotwari tenure and where there is no such law, any person holding such land immediately before the specified date otherwise than in any one of the capacities specified in items (ii) to (v) clause (i); (but does not include a limited owner)."

9. Reading the aforesaid clause, this Court is of the considered view that the above aspect was not taken into consideration by the lower Tribunal as well as the Appellate Tribunal. Taking into consideration the legal effect of all the provisions as narrated above, this Court holds that, in the present case, the first petitioner acquired additional lands by way of will alleged to have been executed in her favour by her father giving her limited interest. As long as he is alive, she can use usufruct without filing declaration u/s 18 of the said Act. After her death, the property has to go to her son as a full owner as per the Will executed by the father of the first petitioner, then only the other petitioners will have to file the declaration u/s 18 of the said Act.

10. Therefore, this Civil Revision Petition is allowed by setting aside the orders passed by the lower Tribunal and as confirmed by the Appellate Tribunal. No costs.