
(2003) 07 AP CK 0033
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4730 of 1995

R. Jayasimha Reddy

APPELLANT

Vs

Government of A.P. and Another

RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Land Encroachment Act, 1905 — Section 2, 7
Limitation Act, 1963 — Article 112

Citation : (2003) 5 ALD 421 : (2004) 3 ALT 205

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : K. Pratap Reddy, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner who is a resident of Beerolu Village, Tirumalayapalem Mandal in Khammam District, filed the writ petition seeking a writ of mandamus declaring the action of the respondents namely, Government of Andhra Pradesh in Revenue Department and the Mandal Revenue Officer (MRO), Tirumalayapalem Mandal, in treating his possession in respect of an extent of Ac.1.47 gts. in Sy.No. 97 of the said village (hereafter called "the disputed land") as unauthorized and as encroachment, is illegal. The petitioner also seeks a declaration that he is the absolute owner thereof and the respondents have no authority or jurisdiction to interfere with his possession over the land.

2. The petitioner claims that disputed land has been in possession of his grandfather, father and himself for the last about 60 years. He alleged that his grandfather's name was recorded in sethwar since 1330-F (1920 A.D.). His grandfather constructed a house, cattle shed and other buildings fifty years ago. While so, the second respondent issued the order dated 2-1-1989 ordering eviction. The petitioner alleges that though the land is described as Abadi

Sarkari, it is meant for construction of houses. By 1987 itself, about Acs.9.00 of land was occupied by villagers for construction of houses and the remaining Acs.2.00 was allotted to various other villagers; Abadi land or Gramakantham land is earmarked only for construction of houses and permission for construction of houses is deemed as "grant" by the Government for the purpose of construction of houses. The petitioner's family is in possession of the land since 1330 F. (1920 A.D.). and it is deemed as ryotwari tenure which includes not only agricultural lands but also land used for residential, cattle shed and other agricultural purposes. Therefore, the occupation of the land by the petitioner's family is deemed to be ownership. By reason of long occupation, it is alleged, the petitioner's family has acquired title to the disputed land. The second respondent passed orders dated 2-1-1989 ordering eviction. The petitioner filed appeal before the Revenue Divisional Officer (RDO), Khammam, who by order dated 31-1-1995 dismissed the same. Therefore, the petitioner filed the present writ petition.

3. The second respondent has filed a counter-affidavit. It is stated that R. Muralidhar Reddy, father of the petitioner who was ex-Sarpanch of the village occupied an extent of Ac.1.14 gts. in the disputed land and utilized the same for construction of house and cattle shed. The petitioner's grandfather encroached Government land though they are not entitled to occupy the same. The land in Sy.No. 97 is Abadi and meant for the purpose of construction of dwelling houses by landless poor persons and construction of house by the petitioner's family cannot render the illegal possession valid. It is stated that there are 69 houses in an extent of Acs.7.07 gts, belonging to Backward Classes and an extent of Acs.2.00 was assigned for house sites by the MRO. The petitioner or his father cannot have any claim over the disputed land. The petitioner's occupation over the said land is unauthorized. The MRO, therefore, initiated proceedings under the A.P. Land Encroachment Act, 1905 ("the Act").

4. Learned Counsel for the petitioner, Sri K. Pratap Reddy, submits that by reason of long standing occupation, the petitioner has perfected his title. When there is a bona fide and genuine dispute over the title, the respondents cannot invoke the provisions of the Act and evict the petitioner from the land treating him as an encroacher. The Government have to approach the Civil Court by filing appropriate suit. Secondly, the learned Counsel contends that for the last about 60 years, the petitioner's family is in occupation of the land and the Government cannot invoke the provisions of the Act after long lapse of time. Reliance is placed on the decision of the Supreme Court in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, , The State of Gujarat Vs. Patil Raghav Natha and Others, , and Mansaram Vs. S.P. Pathak and Others, .

5. Learned Government Pleader for Revenue, Sri P. Rajagopala Rao, submits that against the action initiated by the MRO under the Act, the petitioner availed the remedy of appeal before the RDO, who dismissed the same. Without challenging the order of the RDO, the petitioner is not entitled to seek any declaration as

prayed for. Secondly, he would contend that the petitioner has an effective alternative remedy of appeal before the Commissioner of Land Revenue and, therefore, the writ petition is not maintainable. He also submits that the petitioner is an encroacher and his alleged possession over the disputed land cannot confer any right on the petitioner to claim adverse possession. He further submits that the Government has an option either to file a suit or a land grabbing case or apply the Land Encroachment Act. The petitioner cannot compel the State to file a declaratory suit on the ground that there is a bona fide and genuine dispute as to title. He vehemently contends that the petitioner encroached Government land and, therefore, the provisions of the Act have been initiated. He further submits that the petitioner is seeking title to the disputed land in these proceedings and it is not permissible under Article 226 of the Constitution of India to adjudicate the disputed questions of fact.

6. The analysis of the prayer made in the writ petition reveals that the petitioner seeks the following relief.

(i) to declare that the action of the respondents in treating the petitioner's possession in respect of an extent of Ac. 1.14 gts, in Sy.No. 97 as unauthorized, is illegal;

(ii) to declare that the petitioner is the absolute owner of the land; and

(iii) to hold that the respondents have no authority either to interfere with the petitioner's possession or to dispossess him from the disputed land.

7. These prayers made in the writ petition would throw up corresponding questions for adjudication namely, whether the petitioner is entitled to seek a declaration that he is the absolute owner of the disputed land? Whether this Court can compel the State to avail the remedy of declaratory suit when there is alleged bonafide and genuine dispute as to title? and in the facts and circumstances of the case, whether the respondents are barred to exercise the power and jurisdiction under the Land Encroachment Act after a long lapse of time?

(i) Question of Title

8. It is the case of the petitioner that for the last 60 years, his family is in possession of the land and that the sethwar for the year 1330-F also proves the occupation and possession of his grandfather late Venkatarama Reddy. Though the Government denied that the petitioner's family had been in possession of the property, they admit that the petitioner encroached the Government land and constructed a house without any permission. In the background of this, is it permissible for this Court in exercise of jurisdiction under Article 226 of the Constitution to grant the prayer that the petitioner be declared as absolute owner in respect of the disputed land. It is well settled and indeed axiomatic that ordinarily while exercising the power of judicial review under Article 226 of the Constitution, this Court would not decide disputed questions of title (See State of

Rajasthan Vs. Bhawani Singh and others, , Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, , and Smt. Parvatibai Subhanrao Nalawade Vs. Anwarali Hasanali Makani and others etc., .

9. In State of Rajasthan v. Bhawani Singh (supra), the Supreme Court observed thus:

Having heard the Counsel for the parties, we are of the opinion that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

10. In Parvatibai v. Anwarali Hasanali (supra), the Supreme Court observed as under.

.....Before closing this judgment we would like to emphasise that in cases relating to immovable properties which are governed by the ordinary civil law the High Court should not exercise its special jurisdiction under the Constitution unless the circumstances are exceptional. This aspect has been discussed by this Court earlier on several occasions.

11. The question of adverse possession cannot be gone into in these proceedings. A person who sets up adverse possession is required to prove the factum that his possession has been open and hostile and adverse to the title of the real owner and seek a declaration from a civil Court. In a writ petition, such declaration cannot be given.

12. In view of the above, prayer No. (ii) made by the petitioner cannot be granted. Indeed, the petitioner has not made out any case that there is a bona fide and genuine dispute regarding title. This is further made clear in the forthcoming portion of this judgment.

(ii) Whether the state is required to file a suit?

13. It is not denied that the MRO issued a notice u/s 7 of the Act and after considering the explanation filed by the petitioner passed orders on 2-1-1989 ordering eviction. Aggrieved by the same, the petitioner filed an appeal before the RDO, who by an order dated 31-1-1995 rejected the appeal and ordered the MRO to take action for eviction of the petitioner. In the explanation filed before the MRO, the petitioner never claimed possessory title nor contended that he has perfected title by adverse possession. In fact, before the MRO, he gave a statement to the effect that at the time of construction of house, nobody objected and that if the Government agrees to collect market value of the land for the area occupied by him he is ready to pay the same. This clearly shows that the petitioner admits that it is Government land and that he has no right to seek the relief as prayed in the writ petition. When an encroacher makes a statement before the proper authority that he is willing to pay the market value for the land encroached by him, any contention that such person has perfected title would be

a misconception. It is well settled that adverse possession must be possession adverse and hostile to the real owner himself. Further, adverse possession should be properly pleaded and proved to the satisfaction of the Court that possession had been hostile and adverse to the title of the real owner. After going through the grounds of appeal before the MRO, I am convinced that the petitioner never claimed his possessory title or title hostile or adverse to the title of the real owner. In fact, before the MRO as well as the RDO, the petitioner only requested to allow him to continue in possession as he is willing to pay the market value.

14. In *Government of A.P. v. T. Krishna Rao* (supra), the Supreme Court observed thus:

The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary enquiry contemplated by Sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddin from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit.

15. In *Special Deputy Collector v. Konda Lakshman Bapuji* 1984 (1) APLJ 219 (DB), a Division Bench of this Court observed as under.

.....The occupation of the property by the writ petitioners being open and for an appreciable length of time as observed by the Supreme Court can be taken, prima facie to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law. Since there is a bona fide dispute of title between the Government and the writ petitioners it must be adjudicated upon by the ordinary Courts of law. The Government cannot decide such questions unilaterally in its own favour and evict them summarily on the basis of such decision.....

16. A learned Single Judge of this Court in *Shivalingappa v. State of A.P.* 1988 (1) ALT 716, considered the decisions of the Supreme Court in *Government of A.P. v. T. Krishna Rao* (supra) and the decision of a Division Bench of this Court in *Special Deputy Collector v. Konda Lakshman Bapuji* (supra) and observed that these two decisions do not lay down any general rule that whenever an encroacher (who claims his possession to be not authorized) is sought to be evicted from the Government land, the Government should be compelled to go before the civil Court. The learned Judge also observed that if there is evidence that Government is owner of the land, the Court must not conclude that the petitioner raised bona fide claim about possession.

17. In this case, admittedly, the petitioner is in occupation of the Government

land. It is not denied that inspite of being in occupation allegedly since long, the petitioner or his father or grandfather never claimed possessory title. Therefore, it has to be presumed that the land is Government land. Indeed, the Sethwar also shows that it is Sarkari (Government) land and that Venkatarama Reddy who is grandfather of the petitioner was only in possession of the land. It does not mean that there is a genuine dispute of title. As observed above, the petitioner never disputed the title of the Government. Therefore, the submission of the learned Counsel for the petitioner that the Government cannot unilaterally decide the title is liable to be rejected. Indeed, no such question was raised by the petitioner before the Revenue authorities.

(iii) Question of delay in exercising power under the Land Encroachment Act

18. Learned Counsel for the petitioner submits that the power is sought to be exercised under the provisions of Section 166-B of the A.P. (Telangana Area) Land Revenue Act, 1317-F. Though there is no limitation for exercising power under the Land Encroachment Act, the provisions of Telangana Revenue Act provide limitation to the exercise of power in appeal and revision. Therefore, he contends that in view of the long possession of the petitioner, exercising power under the Land Encroachment Act is not warranted. These contentions are refuted by the learned Government Pleader, who also contends that action was taken under the Land Encroachment Act and not under the Telangana Revenue Act.

19. In the counter-affidavit, it is stated that the petitioner constructed a house 20 years back (counter was sworn on 20-11-1996). This shows that the petitioner constructed a house in the Government land some time in 1976. The learned Government Pleader has produced the file from the office of the MRO which revealed that the second respondent issued notice u/s 7 of the Land Encroachment Act on 5-10-1988. In his explanation, the petitioner never raised any objection regarding delay. On the contrary, while admitting that it is Government land he sought permission for allowing him to continue in the Government land. He pleaded before the MRO to treat the encroachment as unobjectionable. Even before the appellate authority, he never raised such contention that after long lapse of time the Government cannot resort to summary eviction. He could not have raised such contention for the reason that under the Land Encroachment Act, admittedly, no limitation is prescribed. If a person who is in hostile possession of disputed land adverse to the real owner, in certain circumstances, as per Article 112 of the Schedule to the Limitation Act, 1963, possession for more than 30 years would deprive the right of the State to seek declaration of title to the property. In such a case, it is always open to the person to seek declaration if there is a cause of action. But, as noticed, the petitioner did not take any steps. He himself never claimed that his possession is adverse to the possession of the Government. Therefore, the submission that in the absence of limitation, exercise of power under the Land Encroachment Act is arbitrary, cannot be accepted. As presently seen, the decisions relied on by the

learned Counsel for the petitioner are of no help.

20. In *State of Gujarat v. P. Raghav* (supra), the apex Court considered the scope of revisional power of the Commissioner u/s 65 read with Section 21 of Bombay Revenue Code, which provided that the order can be revised at any time by the Commissioner. The Supreme Court held that even where statute confers power to revise orders "at any time", the power must be exercised within a reasonable time and the length of reasonable time must be determined by the facts and circumstances of the case and the nature of the order, which is being revised. The same view was reiterated in *Mansaram v. S.P. Pathak* (supra) and *Ram Chand and Others Vs. Union of India (UOI) and Others*, .

21. In *Hindustan Times v. Union of India* AIR 1998 SC 688 the Supreme Court considered the scope of Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 which confers power on the concerned authority to recover damages from the employer for contravention of the Act and the scheme thereunder. Section 14-B conferred quasi-judicial power, and therefore, the authority was bound to give reasons for its orders. It was also observed that the provident fund amounts deducted by the employer from the wages of an employee are deemed to have been entrusted for the purpose of paying the contribution, and therefore, the Legislature did not think fit to make any provisions prescribing the period of limitation. The Court referring to *State of Gujarat v. P. Raghav* and *Ram Chand v. Union of India* (supra) observed as follows:

... The power u/s 14-B of the Act should be exercised within a reasonable time. The reason is that in the cases where rule of "reasonable time" was applied the exercise of powers by the authority at a very belated stage was likely to result in the deprivation of property which rightly and lawfully belonged to the person concerned, the position u/s 14-B of the Act (sic.) is totally different. The employer who has defaulted in making over the contributions to the Trust Fund had, on the other hand, the use of monies which did not belong to him at all. Such a situation cannot be compared with the above line of cases, which involve prolonged suspense in regard to deprivation of property. In fact, in cases u/s 14-B if the Regional Provident Fund Commissioner had made computations earlier and sent a demand immediately after the amounts fell due, the defaulter would not have been made to use these monies for his own purposes or for his business. It does not lie in the mouth of such a person to say that by reason of delay in the exercise of powers u/s 14-B, he had suffered loss. On the other hand, the defaulter had the benefit of the "boon of delay" which "is so dear to debtors".

22. In *Jai Mangal Oraon Vs. Smt. Mira Nayak and Others*, , Hon"ble Supreme Court observed that even where the provision commences with the words "if at any time", it cannot be taken to mean that the powers could be exercised without any point of time limit unmindful of the rights of the parties acquired under ordinary law of limitation.

23. The analysis of the above decisions would reveal that the law on the subject came to be laid down in relation to exercise of suo motu power of revision and not in relation to exercise of power by the original authority. In case of encroachment of Government land, when such possession becomes objectionable, it is always open to the Revenue authorities to initiate action under the Land Encroachment Act. A person who is in possession of Government land and claiming long standing occupation can never be allowed to urge that the Revenue authorities cannot exercise power after long lapse of time. That the power should be exercised within a reasonable time has no application for exercise of power under the Land Encroachment Act. By reason of Section 2 of the Land Encroachment Act, all the vacant lands, roads, streets, rivers, rivulets, waste lands, porambokes etc., absolutely vest in the State and they continue to vest in the State notwithstanding the fact that they are in possession of encroachers. Doctrine of eminent domain presupposes that sovereign State is absolute owner of all the lands under its rein.

24. Further, the learned Government Pleader has made a submission that though the petitioner availed the remedy of appeal. The RDO dismissed the appeal by order dated 31-1-1995, the same is not challenged. Therefore, the petitioner is not entitled for any relief. Though the order of the RDO is not challenged, in paragraph 15 of the affidavit, the petitioner refers to the impugned order though the RDO is not made a party to the writ petition. Indeed, paragraph 15 of the affidavit reads as under:

The said order being illegal, unauthorized and without jurisdiction I filed an appeal before the Revenue Divisional Officer, Khammam in File D.Dis.No. E1/2184/89, dated 31-1-1995. The said appellate authority viz., the Revenue Divisional Officer, Khammam had by his order dated 31-1-1995 in his File D.Dis.No. 2184/89 purported to dismiss the appeal. Hence this writ petition against the same for the following among other grounds.

25. In view of the above, it must be held that the petitioner in fact challenged the order of the RDO, dated 31-1-1995, whereby the request of the petitioner for alienation of land on payment of market value was rejected. The petitioner did not even array RDO as respondent in this writ petition. If the petitioner is aggrieved by the rejection, he may approach the State Government by making a proper application and the same may be considered in accordance with law and policy in force for alienation of vacant land for market value if such alienation is not objectionable. In this writ petition, no such direction can be granted.

26. The writ petition, for the above reasons, fails and is accordingly dismissed.

There shall be no order as to costs.