
(1960) 08 AP CK 0016
In the Andhra Pradesh High Court
Case No : S.R. No. 37840 of 1959

Reddi China Paidayya

APPELLANT

Vs

Rudrabhatla Maralidhar and Others

RESPONDENT

Date of Decision : 27-08-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1961 AP 498

Hon'ble Judges : Munikanniah, J

Bench : Single Bench

Advocate : P. Kodandaramiah, for the Appellant; Addl. Govt. Pleader, for the Respondent

Judgement

Munikanniah, J.—This matter having been referred to by the office for orders of Court raises the question whether a revision u/s 115 C. P. C against the orders of the District Judge in appeal against the order of the Additional Assistant Settlement Officer lies to this Court.

2. The facts leading to the case are as follows: The Additional Assistant Settlement Officer, Vizianagram dismissed the petition filed before him by the petitioner herein u/s 12 of the Madras Estates (Abolition and Conversion into Ryotwari) Act 1948 and thereby refused the grant of the Ryotwari patta in respect of the lands said to be concerned in O. S. No. 216/2-B and 2-C. An appeal is taken as against this order to the Estates Abolition Tribunal as provided under Sub-section (2) of Section 15 viz., the District Judge, Visakhapatnam, as he was the Tribunal constituted u/s 8 of the Act. The Tribunal dismissed the appeal. This petition against that decision of the tribunal is filed purporting to be u/s 115 C. P. C.

3. TO the objection raised by the office that the Tribunal who heard the appeal viz the District Judge, Visakhapatnam is not a Court and that therefore the High court cannot exercise its revisional jurisdiction u/s 115 C. P. C. Mr. Kodandaramiah, learned counsel who appeared for the petitioner, raised the

contention that inasmuch as the Tribunal which heard the appeal had all the powers of a Civil Court it was subordinate to the High Court.

He argued at length that if the Tribunal is considered as a Court for any purpose, it necessarily follows that its order could be revised by this Court. But an examination of the position with reference to decided cases does not lend support to the contention of the learned counsel. On the other hand, questions arising out of his contentions have, in my view, already been authoritatively decided by judicial pronouncements and that in view of those decisions, it is not open any longer to consider the questions afresh.

4. The Madras Estates (Abolition and Conversion into Ryotwari) Act 1948 originally provided u/s 8 for the constitution of only a Court as a Tribunal. After amendment of that section, it has in Sub-section (2) of that section stated that the Tribunal will consist of a single member who shall be either a District Judge or an officer eligible to be appointed as a District Judge. There is therefore a distinction to be drawn as to the constitution of the Tribunal with reference to the language of the said sub-section as it existed at each relevant time.

The Act seeks to make a person of the status of a District Judge or an officer eligible to be appointed as a District Judge as a Tribunal. The language of the section does not say that it is the District Judge of a Court alone that could be appointed as the Tribunal; but provides persons who could be appointed a District Judge as the Tribunal. This does not necessarily mean that the Tribunal ought to have been a District Judge of a Court.

Even if it be taken as pointed out by the learned counsel, that the rules make mention of a District Judge of a Court, the Full Bench decision reported in O. A. O. K. Lakshmanan Chettiar Vs. J.S. Kannappar and Others, makes it clear that the appointee is only a *persona designata* and could not in any sense be construed as a Court. There, Courts Trotter, C. J. has pointed out that the reference to the Chief Judge, Small Causes Court, who has been appointed under the rules under the Madras District Municipalities Act as Tribunal could not be taken as the Court.

In other words that decision makes it clear that the mention of the Court in that connection is only descriptive of the person who has been designated as a person for the purpose of hearing the election disputes. While referring to the earlier Full Bench decision in K. Parthasarathi Naidu Garu Vs. C. Koteswara Rao Garu and Another, a distinction has been drawn basing upon the language of Section 199 (2) (c) of the Madras Local Boards Act, 1920. It is not necessary to have to refer in detail to the state of law as it existed at the time when the decision in K. Parthasarathi Naidu Garu Vs. C. Koteswara Rao Garu and Another, was given and to the amendments in force when the Full Bench decision in O. A. O. K. Lakshmanan Chettiar Vs. J.S. Kannappar and Others, was rendered.

It is now settled that when it is not the Court but only a presiding Judge that is constituted the Tribunal for purposes of any special act, the Tribunal cannot in

any sense be construed as a Court. This position is still more clear in this case since in specifying the person that could be appointed as the Tribunal no reference to any court has been made, because any officer eligible to be appointed as a District Judge without being in office is also contemplated to be the appointee.

5. It is next to be considered whether in respect of the Tribunal appointed u/s 8 of the Madras Estates (Abolition and Conversion into Ryotwari Act, 1948 which is not a Court the High Court can sit in revision against the decision of the Tribunal (District Judge) in exercise of the powers available u/s 115 C.P.C. In view of the decision in *Peyyeti Jagannadha Rao and Another Vs. Pamarti Venkateswara Rao and Others*, , it is not necessary for me to have to deal with the pros and cons arising out of this question.

The Division Bench consisting of Chandra Reddy, C. J. and Srinivasachari J. of this Court have there discussed the question, though it arose with reference to an order passed by the Revenue Divisional Officer in an appeal against the order of the Tahsildar u/s 16 of the Andhra Tenancy Act and therein it has been clearly laid down that a Tribunal cannot be considered as a Court subordinate to the High Court and that order of the Tribunal is not therefore liable to be revised u/s 115 C.P.C.

The effect therefore of the Full Bench decision reported in AIR 1927 Mad 93 (FB), coupled with that of the Division Bench of this Court reported in *Peyyeti Jagannadha Rao and Another Vs. Pamarti Venkateswara Rao and Others*, will be that even if a District Judge is appointed as the Tribunal, he is only a *persona designata* and his orders are not subject to revisional jurisdiction of the High Court.

6. Mr. Kodandaramiah then argued relying upon a decision of *Bhimasankaram, J.* in *Sri Karutha Kritya Rameswaraswami Varu Vs. R. Ramalinga Raju and Others*, that if a Tribunal has powers of review and the CPC applies to it, it is a Court whose order could be revised u/s 115 C.P.C. But that argument in my view overlooks the important point which has been stressed on in the decision of the Division Bench in *Peyyeti Jagannadha Rao and Another Vs. Pamarti Venkateswara Rao and Others*, . The criterion for judging whether the High Court can exercise jurisdiction over any other Court has therein been hinged on the proposition whether the Tribunal is subordinate to the High Court, and for this purpose the language of Section 3 of the CPC has been relied upon.

It thus becomes clear that it is not the application of the CPC for regulating proceedings of the Tribunal that is made the basis, but the position the Tribunal occupies vis-a-vis the High Court as subordinate thereto, that constitutes the real test. Therefore the mere fact that the procedure contained in the CPC is also to be followed by a Tribunal cannot be considered as the postulate for conferring upon a Tribunal the position or status of Court subordinate to the High Court.

7. Having said that while the application of the procedure under the CPC alone is

not the determining factor, it is pertinent to see what exactly Section 8 of the Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948) says with reference to the procedure to be adopted and for what purpose. The relevant provision is Sub-section (4) of Section 8 of the Act, and it says that every Tribunal shall have powers of a Civil Court to compel the attendance of witnesses and the production of documents.

This provision in my view is restrictive and does not make the powers of the Civil Court to be exercised for all purposes by the Tribunal but only to compel the attendance of the witnesses for being examined or for the production of documents. It is not therefore possible to appreciate the contention of the learned counsel for the petitioner that the Tribunal is a Civil Court for all purposes. I should therefore think that there is a fallacy in this argument inasmuch as it is made to depend upon a wrong assumption that the Tribunal has been constituted a Court for all purposes and the CPC applies in toto.

8. It is further argued that Rule 1 contained in the Rules Supplement of the Gazette dated 17th January, 1950 confers on the Tribunal powers exercisable by a Civil Court in the trial of suits and in appeals and that therefore the decision of the Tribunal also should be taken to be revisable by the High Court. No doubt the rule referred to gives some scope to advance such an argument. But that contention ignores that the powers of the High Court to revise the orders of the Tribunal, which is dependent on the existence of other precedent conditions referred to already, are not derived by the High Court as a matter of course simply because the Tribunal is made to adopt the procedure provided by the CPC for its deliberations.

Again I find a limitation even in this Rule to the effect that the Tribunal shall exercise powers of a Civil Court only in respect of trial of suits and in appeals. Therefore to stretch this rule to the extent of making it appear that the Tribunal is a Court which is also subordinate to the High Court is, in my view, a far cry. Reliance is also placed upon the language of the notification dated 28-6-1958 which specifies that the District Judge of each District shall be the Tribunal and shall have jurisdiction over the estates or parts thereof in the District for the purposes of the Act.

It is stressed that since the notification also adds that the District Judge of the District in whose jurisdiction the major portion of the said estate lies, shall be the Tribunal in respect of that estate, that it is with reference to the jurisdiction of the District Court the specification is made. I am however unable to see how this notification is calculated to further the contention of the learned counsel. All that need be said is that neither the Rule referred to nor this notification has the effect of running counter to the decision of the Full Bench in *O. A. O. K. Lakshmanan Chettiar Vs. J.S. Kannappar and Others*, or of the Division Bench in *Peyyeti Jagannadha Rao and Another Vs. Pamarti Venkateswara Rao and Others*, .

9. Viewed in any manner, the revision petition sought to be filed cannot be

entertained. In view of the fact that the petitioner wants time for converting this application into one under Article 228 or 227 of the Constitution, he is granted time till the 20th September, 1960 for payment of the court-fee.