
(2003) 11 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 26182 of 2001, 20780, 20782, 20785 and 20827 of 2002

Sivudu Venkataswamy

APPELLANT

Vs

Agent to the Government and Others

RESPONDENT

Date of Decision : 25-11-2003

Acts Referred:

Constitution Of India, 1950 — Article 244
Andhra Pradesh (Scheduled Areas) Land Transfer Regulation Act, 1959 — Section 3, 3(2)(a), 3(3)(a), 3(3)(a)(ii)

Citation : (2004) 1 ALD 778

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Balagopal, for the Appellant; Government Pleader for Social Welfare for Respondent Nos. 1, 2 and 4 in WP No. 26182 of 2001 and for Respondent Nos. 1 to 3 in WP Nos. 20780, 20782 and 20785 of 2002, Srinivasa Rao Boddaleri, Counsel for Respondent No. 5 in WP No. 26182 of 2001, P.R.K. Amarendra Kumar, Counsel for Respondent Nos. 5 and 8 in WP 20780 of 2002, for Respondent Nos. 8, 12 and 14 in WP No. 20782 of 2002 and for Respondent No. 10 in WP No. 20827 of 2002, Naram Nageswara Rao, Counsel for Respondent No. 6 in WP No. 20780 of 2002 and for Respondent Nos. 4 and 12 in WP No. 20827 of 2002 and D. Srinivas, Counsel for Respondent No. 7 in WP No. 20827 of 2002, for the Respondent

Judgement

L. Narasimha Reddy, J.—In these writ petitions, common questions of fact and law arise. Hence, they are disposed of through a common order.

2. Proceedings were initiated by the Special Deputy Tahsildar, K.R. Puram, before the Special Deputy Collector (Tribal Welfare), K.R. Puram, West Godavari District, against various individuals u/s 3 of the A.P. Scheduled Areas Land Transfer Regulation, 1959 (Regulation No. 1 of 1959) (for short "the Regulations"). The allegations in these proceedings were that the respondents therein, who are non-tribals, have purchased various extents of lands from tribals, in contravention of the Regulations. A claim was made for resumption of such lands, as provided for

u/s 3 of the Regulations.

3. After issuing notices to the affected parties and on consideration of the matters, the Special Deputy Collector, had rejected the claim of the Special Deputy Tahsildar and refused to interfere with such transfers effected in favour of non-tribals.

4. The petitioners have presented appeals before the District Collector, West Godavari, who is designated as Agent to the Government under the Regulations, against the orders passed by the Special Deputy Collector. Through a common endorsement dated 1-11-2001, the Agent to the Government, the appellate authority, had returned the appeals as not maintainable. The said proceedings are challenged in this batch of writ petitions.

5. The petitioners contend that having regard to the object underlying the Regulations, the strict rule of locus standi cannot be enforced. It is their case that the object of the Regulations being that the lands held by the tribals in the scheduled areas are not permitted to be held or enjoyed by the non-tribals, and having regard to the wide amplitude of proceedings u/s 3, the view taken by the appellate authority cannot be sustained.

6. The contesting respondents filed counter-affidavits. It is their case that the transfers of lands in their favour are not hit by the Regulations, the original authority had considered the matter at length, and refused to interfere with the same. They contend that the petitioners are strangers to the proceedings and they cannot be permitted to reagitate the matter, particularly, when the Special Deputy Tahsildar, who had initiated the proceedings, has not chosen to carry the same in appeal.

7. Sri K. Balagopal, learned Counsel for the petitioners, submits that the Regulations were framed with a view to ensure that the lands held by the tribals in the agency areas are not enjoyed by non-tribals. He submits that having regard to the injustice suffered by the tribals, the Regulations were framed providing for special remedies, by relieving the proceedings from the ordinary procedure and principles. According to him, as long as the object of any proceeding or appeal is for ensuring restoration of lands to the tribals, they cannot be scuttled by invoking the ordinary rules of procedure. He places reliance upon several judgments in support of his contentions.

8. Learned Government Pleader for social welfare and learned Counsel for the contesting respondents submit that unless the petitioners are able to show and establish any interest in the subject-matter of the appeal, they cannot be permitted to reagitate the matter, which has assumed finality with the orders passed by the Special Deputy Collector. They submit that if such a course of action is permitted, it will result in unending litigation on the same subject-matter.

9. The legal regime in the agency areas has always been separate and different

since more than a century. Even during alien Rule, special enactments, such as, the Scheduled Districts Act 1874, the Agency Tracts Interest and Land Transfer Act 1917, etc., came to be made. Special provisions were contained in the Government of India Act 1935 in respect of Scheduled Tribes. The Constitution of India has contained specific provisions, such as, Article 244 and V Schedule, providing for enactment of Regulations, otherwise than through the ordinary process of legislation in this regard. The Governor is conferred with the power to make Regulations. The A.P. Scheduled Areas Land Transfer Regulation, 1959, came to be enacted in exercise of such powers.

10. Section 3(2)(a) of the Regulations confers power upon the Agent or Agency Divisional Officer, who is ordinarily referred to as the Special Deputy Collector, to pass decrees of ejectment in respect of lands held by tribals, either on applications by interested persons or on information given in writing by public servant. An appeal is provided to a superior authority u/s 3(3)(a).

11. In the present cases, the proceedings were initiated u/s 3(2)(a) before the Special Deputy Collector, by a public servant, viz., the Special Deputy Tahsildar. The Special Deputy Collector refused to pass orders of ejectment for the reasons stated in the respective orders. Admittedly, the petitioners were not parties to the said proceedings. They preferred the appeals u/s 3(3)(a) before the Agent to the Government. The appellate authority refused to entertain the appeals, obviously, on the ground that the petitioners were not parties to the proceedings before the Special Deputy Collector.

12. Learned Counsel for the petitioners stresses on the language employed in Section 3(2)(a) of the Regulations. It is his case that when the Agent and the Special Deputy Collector, are conferred with the same or concurrent powers to initiate original proceedings, be it at the instance of any person or on information, that ought not to have been any objection for the Agent to entertain the appeals presented by the petitioners. He contends that even if there was any hurdle for entertaining the appeals, the Agent could have entertained the matters as original proceedings.

13. To appreciate the contentions, it is necessary to analyse Section 3(2) (a), which deals with the original jurisdiction. It reads as under :--

"3. Transfer of immovable property by a member of a Schedule Tribe:--

(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."

From the above, it is evident that three modes of initiation of proceedings are provided for, viz.,

- (a) on an application by any interested person;
- (b) on information given in writing by a public servant; and
- (c) suo motu.

The proceedings, which are subject-matter of these writ petitions, were initiated in the 2nd mode, viz., on information in writing by the public servant. An appeal is provided for, against the order passed by the Special Deputy Collector, to the Agent u/s 3(3)(a)(ii) of the Regulations. Though the Agent to the Government is conferred with the power to entertain the proceedings at the 1st instance also, such power ceases to be available to him once the Special Deputy Collector exercises the same. In such cases, the Agent to the Government can act only as an appellate authority, but not as original authority. It is settled principle of law that where concurrent powers are conferred on various authorities, exercise of such power by one of them would disentitle the rest as regards the same subject-matter. Chaotic situations would emerge, if one after the other authorities exercise the same extent of powers on the same subject-matter. Therefore, the Agent to Government was not expected to exercise powers under Sub-section (2) (a) of Section 3 of the Regulations, once the jurisdiction of the Special Deputy Collector was invoked on the same subject-matter.

14. Now remains the question as to whether it was competent for the petitioners to prefer appeals against the orders passed by the Special Deputy Collector. It is not in dispute that the petitioners are not parties to proceedings before the Special Deputy Collector. It is true that the laws enacted for the benefit of the Scheduled Tribes stand on a separate and different footing. The various provisions contained in the Constitution of India amply make this clear. The object underlying the relevant provisions of the Constitution or the Special Laws made there under for the benefit of tribals, is to restore to the tribals the lands originally held by them, but passed on to the hands of non-tribals. This aspect of the matter was amply made clear by the Supreme Court in its decision in *P. Rami Reddy and Others Vs. State of Andhra Pradesh and Others*, . To the same effect are the judgments of the Supreme Court in *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*, and of the Full Bench of this Court in *Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others*, . Several principles were laid down to sustain the object underlying the special enactments. In *Gaddam Raghavulu v. Agent to Government* 1994 (2) An.WR 216. Justice P. Venkatarama Reddy, as he then was, held :

"The principle of *res judicata* or a principle analogous thereto shall be applied with caution and circumspection in dealing with a case arising under the Regulation meant for the protection of the tribes."

The common message emanating from these and other similar cases is that the ordinary rules of procedure should not be permitted to come in the way of giving effect to the object of the Regulations viz., to ensure restoration of the lands to

the tribals, in case they have been transferred to non-tribals.

15. Appeal is a remedy, which is available to an aggrieved party. Ordinarily, a person, who has participated in original proceedings and suffered an order, is conferred with the right to prefer an appeal, to a superior authority or forum. Certain enactments provide for appeal by persons, who were not parties to the original proceedings. In such cases, leave is required to be sought from the appellate authority. In a way, this is one of the facets of the concept of locus standi. The adherence to the concept of locus standi in varying degrees is to ensure that, no one who has a general interest in a subject-matter, is left without any remedy and at the same time, no person is subjected to face litigation with a person, who has no genuine interest.

16. There cannot be a full proof definition as to whether a person can be said to have locus standi or not. It would depend on the nature of proceedings. If the proceedings relate to enforcement of ordinary civil rights, the test is rather rigorous. Where, however, a semblance of public interest is involved, the rigour tends to be mellowed and the test is not that rigid. To put it shortly, where the subject-matter of the proceedings centres around the individuals, the test of locus standi is severe and, conversely, where it centres around or relates to any public cause, the test is at a relatively low degree.

17. Having regard to the fact that the power to initiate proceedings is conferred with on the aggrieved persons or the Government officials, and that the authority himself is conferred with suo motu powers, it can be said that the subject-matter of such proceedings is not person specific, but property specific. At the same time, unless the aggrieved party himself comes forward to reagitate the matter, it may not be desirable to confer power on each and every individual to reagitate the matter in an appellate forum. A decent balance has to be struck between the two extremities.

18. On the one hand, the object of the underlying Regulations needs to be permitted to be canvassed before the appellate authority; and on the other hand, steps are to be taken to ensure that the persons, who acquired rights under the orders passed by the original authority, are not subjected to unnecessary litigation. For this purpose, it shall be appropriate if an appeal is permitted to be preferred by a person, though not a party to the original proceedings, only on establishing the nature of interest he intends to canvass. Unless such a person has even a remote interest, he cannot be permitted to reopen and reagitate each and every matter of his choice. It is only on establishing his interest relatable to the land, that he can be accorded permission or granted leave, to prefer the appeal. For this purpose, a separate application is required to be made. The consideration of this application can be only after issuance of notices to the affected parties. It is at this stage that relevant questions, such as, the nature of interest of the person seeking leave, the limitation, etc., need to be considered.

19. In mat view of the matter, these writ petitions are allowed and the common

endorsement dated 1-11-2001 is set aside. It shall be open to the petitioners to present separate applications seeking leave of the Agent to the Government, to prefer appeals against the respective orders passed by the Special Deputy Collector, disclosing the nature of interest they claim in the matter and narrating the circumstances under which they could not participate in the original proceedings. On receiving such applications, the Agent to the Government shall issue notices to the affected parties, who in turn, shall be entitled to take all objections as to the projected interests of the applicants, limitation, etc. The Agent to the Government shall pass reasoned orders dealing with all such contentions. If only leave is granted, the appeals shall be taken on file. No costs.