
(2011) 10 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22855 of 2003 and Civil Revision Petition No"s.
5869, 5870 and 5924 of 2009

Smt.Velugubantla Anantha Lakshmi Satyavati Devi Murthy APPELLANT
Vs

State of Andhra Pradesh and Others RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 10(3), 10(5), 11, 16, 20
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 16(7), 3, 4, 5, 6
Hindu Succession Act, 1956 — Section 29A
Registration Act, 1908 — Section 17

Citation : (2011) 10 AP CK 0041

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

Bench : Single Bench

Advocate : V. Tulasi Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

V.V.S. Rao

1. The core issue in all these, being the same, this common order shall cover all the four matters. CRP Nos.5924 and 5869 of 2009 are against the common judgment dated 10.8.2009 in LRA Nos.12 and 13 of 2004 passed by the Land Reforms Appellate Tribunal-cum-IV Additional District Judge, Kakinada (LRAT). The first petitioner also filed CRP No.5870 of 2009 against the judgment dated 10.8.2009 in LRA No.14 of 2003 and his daughter - the second petitioner; filed W.P.No.22855 of 2003 seeking a direction to the Land Reforms Tribunal, Rajahmundry (LRT) to serve a copy of the order u/s 10(3) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (the Act) and enquire into the applications dated 12.9.2003 and 09.10.2003 filed by her under Rule 16(7) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 (the Rules) before issuing orders u/s 10(3) or issuing notice in Form

IX.

2. The following admitted background would reveal the checkered history of the case. The first petitioner is the owner of agricultural properties situated at Jambhoopatnam and Narasapuram Villages of Korukonda Mandal in East Godavari District including the land admeasuring Acs.13.49 in S.No.89 situated at Narasapuram Village (petition schedule-I). After coming into force of the Act, the first petitioner, his wife and two minor sons filed four declarations u/s 8 of the Act being LCC Nos.376 to 378 and 383/Rjy/1975. As per the Act, the minor sons and wife of the holder of the agricultural lands are treated as one family unit u/s 3(f) of the Act. But the first petitioner and others alleged oral family partition on 15.10.1970 during which second petitioner was allegedly allotted petition schedule-I. The LRT did not accept the declarations. By order dated 14.6.1976 while rejecting family partition, the agreements of sale entered into with third parties and the classification of the lands, the LRT determined an extent of 3.6548 Standard Holdings (SH), by clubbing all the declarations as per Section 9 of the Act and Rules 3 to 6 of the Rules. The appeals u/s 20 of the Act being LRA Nos.1193, 1194, 1202 and 1203 of 1976 were partly allowed by the LRAT on 03.7.1978, while rejecting the plea of partition and transactions covered by the agreements of sale.

3. The first petitioner and others filed three revision petitions Against LRA No.1194 of 1976, no CRP is filed. u/s 21 of the Act before this Court. By an order dated 20.3.1979, this Court disposed of CRP Nos.5846, 5847 and 5848 of 1978, rejecting the plea for exclusion of minor's lands but accepting the sale effected by the three agreements. Thereafter the LRT, by order dated 23.7.1992, redetermined the excess holding of the first petitioner at 2.7978 SH. The first petitioner again preferred LRA No.118 of 1992 which was disposed of on 22.11.1993 by the LRAT. The revision being CRP No.1897 of 1994 by the Government was allowed and the order in LRA No.118 of 1992 was set aside. The LRT then initiated surrender proceedings in respect of the excess holding of the first petitioner. Being aggrieved by the order in C.R.P.No.1897 of 1994, the first petitioner preferred a SLP being SLP No.16708 of 1998 before the Supreme Court and obtained an order of stay on 02.11.1998. This was allegedly informed to the LRT.

4. The petitioners at that stage filed an application purportedly under Rule 16(7) of the Rules on 12.9.2003 alleging that second petitioner is daughter of the first petitioner-first petitioner; at the time of her marriage on 18.11.1985 with the person of Jambhoopatnam village, her parents announced the gift of petition schedule-I which was allegedly allotted to her in the oral partition on 15.10.1970; also announced gift of Acs.29.02 in S.Nos.256/1, 256/2, 299, 362, 373, 443/2 and 483 of Jambhoopatnam village (petition schedule-II); and that parents delivered possession to her duly executing a memorandum on 03.1.1985. The daughter also allegedly sent another reminder to LRT on 09.10.2003 in vain. The second petitioner then filed W.P.No.22855 of 2003

seeking a direction to the LRT to dispose of her application filed under Rule 16(7) of the Rules.

5. While admitting the matter, this Court passed orders of stay of dispossession until the application is disposed of by the LRT. It is not disputed that even before the second petitioner filed the Writ Petition on 28.10.2003, the LRT by an endorsement dated 15.10.2003 rejected the application of the second petitioner against which she filed LRA No.13 of 2003 and the first petitioner filed LRA No.12 of 2003 against the issue of Form VI directing him to surrender excess holding. By common order dated 10.8.2009, the LRAT dismissed the LRA Nos.12 and 13 of 2003. The first petitioner also filed LRA No.14 of 2003 against the issue of order under Rule 8(1) in Form IX directing him to deliver possession of lands surrendered or deemed to have been surrendered, and also directing the authorized officer to take possession of petition schedule-I and II. The said LRA was also dismissed on 10.8.2009.

6. The Counsel for the petitioners submits that the LRT committed an error in not following the procedure contemplated u/s 10 of the Act and Rules 7 and 8 of the Rules. He would urge that the LRT rejected the application of the second petitioner by an endorsement ante-dating the same after receiving copy of the order of stay granted by this Court on 30.10.2003; there was no notice issued to the first petitioner while passing an order in Form IX and, therefore, the entire procedure is vitiated. The second petitioner was given property at the time of her marriage in 1985 pursuant to the oral partition in 1970; she is in possession of the property and, therefore, the order in Form IX to take delivery of the possession of the lands without notice to her is illegal being contrary to Section 10(3) & (5) of the Act and Rule 7 of the Rules. Insofar as the case of the first petitioner is concerned, the Counsel would contend that the order in Form IX, without prior order in Form VI especially when the orders of stay granted by this Court are in force, is illegal and unsustainable. The Counsel placed reliance on *Guduru Seetharama Reddy v The LRT* ILR 1976 534, *Siddamma v Government of Andhra Pradesh* 1978(1) APLJ (HC) 50, *K. Buchi Reddy v State of Andhra Pradesh* 1978 (2) ALT 9 (NRC), *Shyamamma v State of Andhra Pradesh* 1979(1) APLJ 55, *State of Andhra Pradesh v P. Venkatayya* 1980(1) APLJ 50 (NRC), *P. Ramaswamy v Spl. Tahsildar* L.R. 1980 (2) ALT 58, *Bonam Venkata Satyanarayana Vs. State of A.P.*, and *Prema Vs. Nanje Gowda and Others*,

7. It is appropriate to deal with first the case of the second petitioner, who is the daughter of the first petitioner. Her case is that during the family partition in 1970, she was allotted petition schedule-I and that the parents executed a memorandum to that effect at the time of her marriage. This submission, for reasons more than one, is devoid of any merit and frivolous. First, as held by a Full Bench of this Court in *Gandevalla Jayaram Reddy Vs. Mekkala Padmavathamma and others*, , a gift given to the daughter at the time of her marriage known as "pasupu kumkuma" is compulsorily registerable u/s 17 of the Registration Act, 1908. Indisputably the oral partition and the memorandum in

1985 allotting/gifting property to the second respondent are not registered. The said documents, therefore, cannot be legally enforceable nor do they confer any right on the second petitioner. Secondly, thirty-five years ago the first petitioner, his wife and two minor children filed separate declarations but, rejecting the plea of oral partition, the LRT clubbed all the declarations and determined the surplus agricultural holding of the first petitioner alone. The second petitioner did not file declaration and the plea of partition was rejected consistently by the LRT, LRAT and this Court. Therefore, it is certainly frivolous to rake up the issue which is long settled in the case against the second petitioner. Thirdly, though it is the case of the first petitioner that in the family partition, second petitioner was allotted petition schedule-I, by the time second petitioner started agitating the matter, she also claimed to have been gifted petition schedule-II. Here again in the absence of any registration of memorandum or in the absence of any acceptable cogent and convincing evidence, no credence can be given to her version. Fourthly, the proceedings under the Act commenced with filing of declaration by the first petitioner some time in 1975 or 1976. It is only on 12.9.2003 the second petitioner work up to claim her right and came forward with an application purportedly under Rule 16(7) of the Rules. The belated attempt would certainly improbabilise her claim. She was married in 1985 and nothing prevented her to get impleaded in any of the proceedings when finally by virtue of the orders of this Court in the first round of revisions, namely, CRP Nos.5846, 5847 and 5848 of 1978, the first petitioner was held to have surplus holding of 2.7978 SH which indisputably includes the petition schedule-I and II. Fifthly, no evidence is produced by the second petitioner to prove her possession whereas the land allegedly given to her under "pasupu kumkuma" gift was shown by the first petitioner in his declarations - as we presently notice from, as well as in the surrender proceedings. This is not denied. Indeed in her application dated 12.9.2003 made to the LRT under Rule 16(7) of the Rules she admitted that, "the first petitioner (her father) along with second petitioner and her mother proposed the lands gifted to her towards excess land to be surrendered to the Government and that she was not aware of the same and that on enquiry she learnt that the matter was still pending consideration before the LRT". It is quite unimaginable that the second petitioner was not aware of the proceedings till two days prior to filing of the application. The belated attempt is obviously a last desperate attempt by the first petitioner himself to retain the land which was determined as surplus by reason of the orders of this Court in the earlier round of revisions. Lastly by endorsement dated 15.10.2003 the LRT rejected her applications dated 12.9.2003 and 09.10.2003 and the submission of the Counsel that the said endorsement was issued after this Court stayed dispossession cannot be countenanced.

8. The second petitioner cannot claim any coparcenary right in the property held by the first petitioner. This is well settled. In B. Chandrasekhar Reddy (D) by Lrs. Vs. State of Andhra Pradesh, , appellant therein had filed two separate declarations under the Act. The LRT determined surplus land of 4.3360 SH. His

appeal was partly allowed by LRAT. He then filed revision before the High Court. During its pendency, he died and his daughters came on record as legal representatives. When the revision was pending, A.P. Legislature inserted Section 29-A of Hindu Succession Act, conforming coparcenary rights on daughters. The appellant then claimed benefit thereunder. The High Court did not accept the plea and rejected the Civil Revision Petition. Before the Supreme Court, reliance was placed on Section 29-A and the relevant provisions dealing with family unit in Land Reform laws. The Supreme Court while dismissing the appeal, held that Section 29-A can be invoked only by major daughters if they are not married by the time of coming into force of amendment. The relevant observations are as follows.

The provisos to Sub-sections (iv) and (v) of Section 29-A are important in the sense that it is specifically mentioned that the benefit of Section 29-A can be invoked only by major daughters if they are not married prior to the commencement of Section 29-A of the Act. The said provision came into effect from 15-5-1986. Appellants 4 and 5 married prior to 15-5 1986. The sixth Appellant was married on 29-8-1986 i.e. after the commencement of Section 29-A. Appellants 6 and 7 were minor daughters as on 1-1-1975, the date of the commencement of the Act. Appellant 6 Kumudini Devi was born on 1-5-1962 and Appellant 7 Sridevi was born on 2-3 1971. Appellants 4, 5 and 6 were major daughters and they were married at the time of commencement of the Ceiling Act and Appellants 6 and 7 were minors on that date, and were unmarried. They were treated as members of the family and the declarant must have derived benefit of such fixation of the ceiling. So, in any view of the matter, Section 29-A has no impact on the fixation of the ceiling as far as these Appellants are concerned. It is true that by Section 29-A of the Hindu Succession Act, the daughters acquired a right by birth as they were deemed to be treated as coparceners of the joint family and they have got a right to seek partition of the joint family property but as regards the fixation of the ceiling, in the instant case, Section 29-A does not confer any additional benefit to Appellants 6 and 7.

[Emphasis supplied]

9. Thus, it must be held that the second petitioner failed to validly prove any gift in her favour prior to coming into force of the Act and she also failed to prove that she has been in possession of the property from 1985 onwards.

10. The main contention of the first petitioner is that the order to surrender land in Form IX without prior notice in Form VI under Rule 7(1) of the Rules, after disposal of the SLP is illegal and contrary to the provisions of the Act and the Rules. This submission is also devoid of any merit. The conspectus of relevant provisions of the Act in this regard is as follows.

11. The person who holds agricultural land in excess of ceiling limit has to file a declaration before LRT. The declaration has to be enquired into after obtaining information and the ceiling area has to be determined u/s 9 of the Act. The

surrender of land declared to be surplus is governed by Section 10 of the Act. Under sub-section (2) thereof, the LRT has to serve a notice on the person liable to surrender the land held in excess of the ceiling area. The person is required by such notice to file a statement giving full particulars of surplus lands proposed for surrender. Under sub-section (3) of Section 10 if satisfied, the LRT shall pass an order approving surrender or pass an order under sub-section (5) of Section 10 refusing the acceptance of surrender. Unless and until the order passed by the Tribunal u/s 9 of the Act is modified by the LRAT u/s 20, the surrender of land by the declarant approved by the Tribunal under sub-section (3) of Section 10 is final and the land absolutely vests in the Government u/s 11 of the Act. Section 16 of the Act deals with payment of compensation for the surplus land so surrendered.

12. It is also necessary to notice Rules 7 and 8 of the Rules which deal with the surrender of land and procedure for taking possession of such land. The notice u/s 10(2) of the Act read with Rule 7(1) of the Rules has to be in Form VI and the statement giving all particulars of the land proposed to be surrendered forms part of Form VI. In response thereto the LRT shall issue a notice in Form VII if it is proposed to refuse to accept the lands proposed for surrender after considering the objections pursuant to the publication made in Form VII. If the proposal to surrender is refused, the LRT itself shall select the lands, the particulars of which are mentioned in Form VII. This is finally subject to any order by appellate/revisional authority. As per the order in Form VII, the RDO shall then initiate necessary action under Rule 8 of the Rules for taking possession and issue an order in Form IX authorizing any officer not below the rank of Revenue Inspector to take possession of the land.

13. In the case on hand, after this Court redetermined the surplus holding by an order dated 20.3.1979 in CRP Nos.5846, 5847 and 5848 of 1978, LRT passed orders declaring the first petitioner to be in surplus extent of 2.7978 SH. Thereafter the first petitioner filed appeal before the LRAT. The same being LRA No.118 of 1992 was disposed of on 22.11.1993 which of course was set aside by this Court in CRP No.1897 of 1994 dated 21.7.1998. After the disposal of the matter by this Court, the LRT issued Form VI notice on 22.9.1998. Thereafter the RDO issued Form IX notice directing the Mandal Revenue Inspector, Korukonda to take possession. By that time, there was no order of stay by the Supreme Court in SLP No.16708 of 1998 which is admittedly granted on 02.11.1998.

14. The first petitioner's contention that Form IX notice was not proceeded by Form VI notice cannot be accepted. Insofar as the LRT is concerned, a notice in Form VI was issued on 22.9.1998 as admitted by the second petitioner herself. The first petitioner submitted statement/particulars of lands proposed to be surrender. By reason of the proceedings pending for more than five years, the RDO in all probability could not have issued Form IX notice as required under Rule 8(1) of the Rules. It is only after dismissal of the SLP the order was passed and the same does not vitiate the proceedings. The LRAT verified the original

records and noticed the observations of this Court in CRP No.1897 of 1994 that the question of again serving notice on the declarant by the LRT does not arise and the next course is to initiate surrender proceedings. The Tribunal also observed in its common order dated 10.8.2009 in LRA Nos.12 and 13 of 2003 that after issuing notice in Form VI on 22.9.1998, the first petitioner proposed to surrender the lands in Jambhoopatnam and Narasapuram villages; the MRO inspected the lands and reported that the lands proposed are suitable for assignment and that in pursuance thereof notice in Form VII was published and objections received by LRT were rejected. This finding of LRAT has not been contraverted nor challenged. Therefore the impugned order of the LRAT does not suffer from any error apparent on the face of the record.

15. The writ petition was filed seeking a direction to LRT to consider the application purportedly made under Rule 16(7) of the Rules which provides that, "at any time during the pendency of the proceedings any person can be with the leave of the RDO/LRT appear, adduce evidence, cross-examine witnesses and be heard". In this case, the application filed by the second petitioner was rejected on 15.10.2003 and, therefore, the question of issuing a direction to the LRT/RDO to give an opportunity as is contemplated under Rule 16(7) of the Rules does not arise.

16. Before concluding this order, it is necessary to observe that the first petitioner (father) and the second petitioner (daughter) have been desperately trying to prevent the authorities from taking possession of the land proposed to surrender by the first petitioner himself. The attempts made by them in filing number of cases prior to final determination of the surplus holding held by the first petitioner and subsequent thereto in the surrender proceedings may speak of their perseverance but deserves to be condemned. The persons of such attitude anywhere are bane for the agrarian and social reform which is sought to be ushered in by the well meaning legislation like the Land Reforms Act.

17. In the result, for the above reasons, the civil revision petitions are dismissed without costs, as they are being rejected at the admission stage itself. The writ petition is dismissed with costs.