
(2008) 12 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23669 of 2000

Sri Vemula Bhaskar and Another

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 11-12-2008

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 38E

Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 — Section 3
Registration Act, 1908 — Section 17(1)

Citation : (2009) 2 ALD 500 : (2009) 2 ALT 299

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Kowturu Vinaya Kumar, for the Appellant; Government Pleader for Social Welfare for Counsel for Respondents 1 to 4 and A. Ramalingeswara Rao, Counsel for 5th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—One Syed Habib Khadri owned an extent of Ac.365.00 of land in Survey No. 19/2 of Peddireddigudem Village of present Chandragonda Mandal, Khammam District. The grand father of the 5th respondent herein, by name Korivi Veeraswamy, a tribal was declared as a protected tenant in respect of Ac.12.12 guntas of that land under the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short "the Act"). He was also issued a certificate u/s 38-E of the Act. The grand father of the first petitioner, by name Vemula Subbaiah is said to have purchased that land on 06.01.1961 under an unregistered sale deed from Veeraswamy.

2. On a complaint made by Veeraswamy that the alleged sale in favour of Subbaiah is contrary to the provisions of the Andhra Pradesh Schedule Areas Land Transfer Regulation 1 of 1959 (for short "the Regulation"), the Special Deputy Collector, Paloncha, the 3rd respondent herein took up the matter as L.T.R. Case No. 147 of 1977. Through an order, dated 05.11.1977, the 3rd

respondent refused to interfere and dismissed the case. Subsequently, the 5th respondent approached the 3rd respondent with similar application. By that time, Subbaiah died and his son Narasimha Rao, husband of the 2nd petitioner, was impleaded as a party. It was taken up as L.T.R. Case No. 1288 of 1993. This case was also dismissed relying upon the order in L.T.R. Case No. 147 of 1977.

3. An organization, by name Akhila Bharatiya Adivasi Parishad, approached the 3rd respondent stating inter alia that the land owned by the grand father of the 5th respondent is unlawfully being enjoyed by the petitioners herein. Thereupon, the 3rd respondent registered L.T.R. Case No. 1106 of 1997. The 5th respondent was shown as the 1st petitioner and the petitioners herein were shown as respondents. After making reference to the two orders in L.T.R. Case Nos. 147 of 1977 and 1288 of 1993, the 3rd respondent dismissed this case on 13.08.1997. Aggrieved thereby, the 5th respondent filed appeal before the Agent to Government, 2nd respondent herein and it was taken up as C.M.A. No. 54 of 1997. The appeal was allowed, vide orders, dated 11.05.2000. The petitioners filed a revision before the Government, 1st respondent herein, and through orders in G.O.Ms. No. 108, dated 30.11.2000, the 1st respondent rejected the revision. Hence, this writ petition.

4. Sri Kowturu Vinaya Kumar, learned Counsel for the petitioners submits that the subject matter of these proceedings, viz., the land was covered by two earlier orders passed by the 3rd respondent and by operation of principle of res judicata, the subsequent adjudication is barred. He contends that the 2nd respondent while hearing the appeal, had undertaken independent exercise of verification of records behind back of the petitioners and arrived at a conclusion that the entries in relation to the possession over the land are forged. Learned Counsel submits that such a course is impermissible and in case, the 2nd respondent felt that verification is necessary, the matter ought to have been remanded or at least the petitioners ought to have been given an opportunity to participate. Learned Counsel further submits that the conclusions of the 2nd respondent, be it, as to the application of principle of res judicata or pressing into service the ground, based on Section 38-E of the Act, are untenable in law.

5. Learned Government Pleader for Social Welfare submits that the two orders passed by the 3rd respondent on earlier occasion were not on merits, and that no opportunity was given either to the 5th respondent or his predecessor in title to put forward their case. He further contends that when the proceedings are initiated by different parties or on fresh grounds by the same parties, the principle of res judicata does not apply. He also submits that the claim made by the petitioners on the basis of the unregistered sale deed cannot be taken into account, to defeat the valuable rights conferred upon the tribals.

6. Sri A.Ramalingeswara Rao, learned Counsel for the 5th respondent submits that the so called sale deed was fictitious and even according to the records relied upon by the petitioners, the exclusive possession was shown only from the year 1971 onwards. He contends that in case, the possession of the petitioners

or their predecessors was exclusive, the question of their names being shown along with the name of Veeraswamy does not arise and it clearly indicates that the names were interpolated.

7. The grand father of the 5th respondent acquired title over the land as a protected tenant. The same has ripened to that of ownership with the issuance of a certificate u/s 38-E of the Act. The Regulation prohibits transfer of land from tribals in favour of non-tribals. It was extended to the Telangana area with effect from 01.12.1963. The grand father of the first petitioner pleaded that he purchased Ac.12.12 guntas of land from Veeraswamy through an unregistered sale deed on 06.01.1961. In view of Section 17(1) of the Registration Act and the other provisions of the Transfer of Property Act, the sale through such a document cannot be recognized in law. This Court, in its judgment, dated 10.08.1998 in C.R.P. No. 1087 of 1996 held that an unregistered sale deed cannot be taken into account, while examining the nature of rights under the Regulations. Similar view was taken in other judgments also.

8. There is a possibility for the petitioners to contend that their rights cannot be defeated in case, the possession accrued to them or their predecessors immediately after sale and it remains exclusively with them. It was in this context that the petitioners themselves relied upon the extracts of various pahanies from the year 1963 on wards. In all the three rounds of litigation before the 3rd respondent, no verification of original records was undertaken. For the first time, the 2nd respondent called for the records and he found that the name of Subbaiah, grand father of the 1st petitioner, the original purchaser, was inserted after the name of Veeraswamy in the pahanies for the years subsequent to 1963. An objection is raised by the learned Counsel for the petitioners for such a verification for the first time at the appellate stage. Assuming that the entries are proper and genuine, it needs to be seen as to how far they would give raise to rights in favour of the petitioners.

9. Even as of now, the pattadar continues to be Veeraswamy. It was only in the "possession" column in the pahanies that the name of Mr. Subbaiah was inserted for the years 1963-64 on wards till 1970-71 along with that of Veeraswamy. In case, the possession is exclusive, the question of the name of Veeraswamy figuring in the column No. 16, which depicts the name of the person in actual possession of the land, would not arise. Therefore, even if one goes by the evidence adduced on behalf of the petitioners, it becomes clear that they failed to prove exclusive possession before 1972. It was only for the year 1971- 72 that the name of Vemula Venkata Subbaiah was shown as exclusive possessor of Ac.12.12 guntas of land even while continuing Veeraswamy as pattadar. Therefore, the claim of the petitioners as to exclusive possession cannot be taken into account.

10. The petitioners raised the plea of res judicata at every stage. The 3rd respondent passed an order in L.T.R. Case No. 147 of 1977. In fact, the order passed in that case was treated as the basis to reject L.T.R. Case Nos. 1288 of

93 and 1106 of 1997.

11. Way back in the year 1994, in *Gadda Raghavulu v. Agent to Govt* 1994(2) An.W.R. 216 . this Court held that an order passed in earlier proceedings, under the Regulations, can operate as *res judicata* in subsequent proceedings, if only it was between the same parties and on the basis of the same material. In other words, it was observed that if the proceedings are initiated may be in respect of the same land, but by different persons, or by the same person on the strength of some other material, the principle of *res judicata* does not apply. This was followed subsequently in *N. Durga Rao and Another Vs. Special Deputy Collector (Tribal Welfare) and Others*, . The appellate authority took these aspects into account and held that the orders passed by the 3rd respondent on earlier occasions do not operate as *res judicata*. This Court is in total agreement with the same.

12. The Regulations were enacted through a special mechanism in exercise of powers under Schedule-V of the Constitution of India. Framers of the Constitution have evolved a special procedure for protection of the rights of the tribals in the scheduled areas. Such rights cannot be permitted to be defeated by having recourse to the hyper-technicalities. It is apt to refer here that apart from the prohibition contained u/s 3 of the Regulations, the alleged transfer in favour of Subbaiah was invalid on account of the prohibition contained u/s 38E of the Act. It is rather unfortunate that it took three rounds of litigation spread over three generations for the 5th respondent to realize the land. Correspondingly, the family was denied the benefit of the enjoyment of the land for such a long time. The matter cannot brook any further delay.

13. The writ petition is accordingly dismissed. Respondents 2,3 and 4 shall take immediate steps to ensure that the possession of the land is restored to the 5th respondent, if necessary, by permitting the petitioners to remove the standing crop, if any. There shall be no order as to costs.