
(2004) 03 AP CK 0094
In the Andhra Pradesh High Court
Case No : CRP No. 4495 of 1997

State of Andhra Pradesh

APPELLANT

Vs

Mathangi Kanakaiah and Others

RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 38, 38E
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 8, 9

Citation : (2004) 3 ALD 731 : (2004) 4 ALT 322

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Government Pleader for Ceiling, for the Appellant;

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This revision is filed by the State of A.P. under Section-21 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, (for short, the Ceiling Act) against the order of the Land Reforms Appellate Tribunal, Warangal (for short "LRAT") in L.R.A. No. 38 of 1990, dated 17.3.1993. The LRAT, in turn, was dealing with an order, dated 27.10.1986 passed by the Land Reforms Tribunal, Warangal (for short "LRT") in respect of Ac.0-45 cents of land in Sy.No.477 of Waddepally Village, Warangal District.

2. Father of the 7th respondent filed a declaration as required under the provisions of the Act in respect of the lands held by him before the LRT, Warangal, On consideration of the same, the LRT passed an order taking a view that the family unit holds an extent of 1.8564 Standard Holdings in excess of ceiling" limits. After the death of the original declarant, the LRT initiated proceedings u/s 10 of the Ceiling Act, to resume possession of excess lands. It was in this process that it identified the land in Sy.No. 477 of Waddepalle Village admeasuring Ac.0-45 cents.

3. When the possession of the land was about to be taken, the respondents approached the LRT with a representation stating that their predecessor-in-title, late Mathangi Ramaiah was a protected tenant in respect of the land in Sy.No. 477 of Waddepally Village under the A.P. (Telangana Area) Tenancy and Agricultural Lands Act (for short "the Tenancy Act"). It was their case that an ownership certificate u/s 38-E of the Tenancy Act was issued in respect of the entire land in Sy.No. 477, and the name of Errabelli Venkateswara Rao, father of the original declarant was deleted and the name of Manthagi Ramaiah was entered as a protected tenant in the faisal patti. The LRT did not accept the plea and rejected their claim. Thereupon, the Respondents 1 to 6 filed L.R.A. No. 38 of 1990 before the LRAT.

4. The LRAT dealt with L.R.A. No. 38 of 1990 as well as L.R.A. No. 40 of 1990 which related to the remaining portion of the land in the same survey number but covered by declaration filed by another successor of the original owner, by name Errabelli Vijaya Kumar Rao, together. Through its order, dated 17.3.1993, it took the view that since the name of the protected tenant was entered in faisal patti, it constitutes a conclusive proof, and the land to that extent, ought not to have been included in the holding of the declarants at all.

5. Learned Government Pleader for Land Ceiling. submits that the LRAT had committed an error in accepting the plea of the Respondents 1 to 6 that their predecessor-in-title was a protected tenant and thereafter became an owner, even though they have not filed the certificate u/s 38-E of the Tenancy Act, or other documents to prove that their predecessor-in-title was a protected tenant. It is his contention that the common order in L.R.A. Nos.38 and 40 of 1990 and against the order in L.R.A. No. 40 of 1990, was the subject-matter of C.R.P. No. 4494 of 1997, that the C.R.P. was allowed setting aside the order insofar it related to L.R.A. No. 40 of 1990 and for that reason, this C.R.P. also deserves to be allowed.

6. Though the Respondents 1 to 6 were served with notices, they have not chosen to enter appearance. The notice sent to 7th respondent was returned unserved.

7. It is true that the LRAT disposed of L.R.A. Nos.38 and 40 of 1990 through a common order, two separate revisions being C.R.P. Nos.4494 of 1990 and 4495 of 1990 (present case) respectively were filed and out of them C.R.P. No. 4494 of 1990 was allowed by this Court through order, dated 14.3.2001. Consistency demands that same result should follow in this case also. However, a comparison of the facts and verification of the record, discloses that an important aspect missed the attention of this Court, when C.R.P. No. 4494 of 1990 was decided. Since the Ceiling Act is ex-proprietary in nature, and that rights of tenants in respect of agricultural lands are protected under the Tenancy Act, which is included in the IXth Schedule of the Constitution of India, a careful and cautious approach is needed. If two views are possible in such a situation, the one which conforms to the latter Act is to be preferred. Howsoever desirable consistency in

approach may be, it cannot be a ground to trample the rights of citizens, recognized under an anterior enactment, brought about as agrarian reforms. If the record warrants a different finding, clamour for consistency should not come in the way.

8. The claim of the Respondents 1 to 6 was that their predecessor-in-title by name Mathangi Ramaiah was the protected tenant in respect of the lands in Sy.No. 477 of Waddepalle Village. In support of their claim, they have filed the certified copy of faisal patti. Through this, the name of the original owner was replaced with that of the protected tenant. The basis is mentioned. It is not in dispute that faisal patti is one of the most important categories of revenue records, which evidences the transfer of title from one person to another, indicating the reasons for such transfer. The original owner of this land in Sy.No. 477 was one Errabelli Venkateswara Rao. His son, filed declaration. The 7th respondent is the grandson of the original owner. It is not the case of the petitioner that there was no protected tenant in respect of the land in Sy.No. 477. The only objection raised by the petitioner in this C.R.P. is that the Respondents 1 to 6 ought to have filed the original of certificate issued u/s 38-E of the Tenancy Act.

9. It should not be forgotten that the LRT is in possession of the entire records, even those under the Tenancy Act. It was not at all difficult for them to have referred to the record and to make necessary submission as to the genuinity of the claim of the petitioners. The original record is with the revenue authorities. If the claim of the Respondents 1 to 6 was not genuine, or not borne out by record, the simplest thing for them would have been to say so. Being the custodian of the record under the Tenancy Act also, it was not competent or open for the LRT, to have insisted on hyper technicalities. It was not as if Respondents 1 to 6 by themselves were the protected tenants or holders of certificates u/s 38-E of the Tenancy Act. Even now it is not " contended that the predecessor-in-title of Respondents 1 to 6 was not a protected tenant in respect of the land in Sy.No. 477. The Tenancy Act is included in DC-Schedule of the Constitution and its inclusion was upheld by the Supreme Court. That being the case, the rights accrued to the persons under such an enactment cannot be brushed aside, on the baseless suspicion expressed by the LRT.

10. Coming to the order passed by this Court in C.R.P. No. 4494 of 1997, it needs to be observed that a material mistake as to fact appears to have crept into it. The claim in both the matters was that Errabelli Venkateswara Rao was the original landlord and Mathangi Ramaiah was the protected tenant. The LRAT held that the faisal patti establishes that Mathangi Ramaiah is the protected tenant. The finding of the LRAT reads as under:

""For the reasons mentioned above, it is held that Mathangi Ramaiah, predecessor-in-title of the appellants in both the appeals, was a protected tenant of Errabelli Venkateswara Rao, predecessor-in-title of the declarants herein in respect of Ac.8-01 cents of dry land in Sy.No.477 of Waddepalli, that he was

granted a certificate of ownership in respect of the said land u/s 38-E of the Hyderabad Tenancy Act, that the name of Errabelli Venkateswara Rao was substituted by that of Mathangi Ramaiah as pattadar of the said land and that the inclusion of the said land in the holding of declarant herein and the orders under appeal resulting therefrom are not valid and that they are liable to be set aside"

11. This being the finding of the LRAT, this Court has observed as under in C.R.P. No. 4494 of 1997:

"However, the Appellate Tribunal by the impugned order came to a conclusion that Venkateswara Rao was protected tenant in respect of the land in Sy.No.477. The finding is erroneous. Ex.A-1-faisal patti is not a conclusive as to whether the father of Respondents 1 to 6 was given a ownership certificate u/s 38-E of the Tenancy Act."

12. I have no doubt in my mind that the mistake occurred on account of the absence of assistance from the respondents. The binding nature of a precedent, in such circumstances, has its own limitations. The other or future litigants, seeking adjudication on similar set of facts or law, cannot be made to suffer on account of the indifference or failure of the parties in an earlier litigation resulting in a precedent. Dealing with the situation, Sir John Salmond, in his Treatise on Jurisprudence, observed as under:

"One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. Where a judgment is given without the losing party having been represented, there is no assurance that all the relevant considerations have been brought to the notice of the Court, and consequently the decision ought not to be regarded as possessing absolute authority, even if it does not fall within the sub-silentio rule". (See Solmond on Jurisprudence - Twelfth Edition page 155)

13. In this case also, the respondents have not chosen to enter appearance. However, since the rights of individuals under an agrarian enactment are involved little pragmatic and inquisitorial, instead of pure doctrinaire and adversarial approach can be adopted. Such a course, if at all anything, would conform to the social outlook and advance the policy underlying the such enactments, which, the constitutional Courts profess to undertake and encourage.

14. But for the material mistake as to fact, and absence of proper assistance, the result in the above CRP would certainly have been different. For this and the other reasons indicated above, with due respect to the learned brother who passed the order in CRP No. 4494 of 1997, I regret my reluctance to follow it. Once the authenticity and correctness of the faisal patti is not disputed, and the rights of the respondents are established, the petitioner is not entitled to deny them to the Respondents 1 to 7.

15. The CRP is accordingly dismissed.