
(1980) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No"s. 1934 and 6060 of 1979

The State of Andhra Pradesh

APPELLANT

Vs

Kovvuri Paparddy

RESPONDENT

Date of Decision : 23-01-1980

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 3

Citation : AIR 1980 AP 202

Hon'ble Judges : C. Kondaiah, C.J;Seetharam Reddy, J

Bench : Division Bench

Advocate : Govt. Pleader for Transport, for the Appellant; S. Venkatareddy, for the Respondent

Judgement

Seetharam Reddy, J.—These two revisions arise out of a reference wherein a common point is involved, and that is: Whether the lands, which have been registered as wet and included in the B-schedule of the localisation G. O., have to be classified as double crop wet lands or single crop wet lands, when the second crop has been raised from the private source of water and not from the authorised source of water, within the meaning of Section 3 (d) of the A. P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 hereinafter referred to as the Act"; and whether the onus is on the landholder or the Government to establish that private source of water was resorted to because of non availability or non supply of water from the authorised source.

2. The chief contention of the learned Government Pleader is that once lands are included in the B-Schedule of the localisation g. O. and registered as Wet", they have to be treated as "double crop wet lands" unless it is established by evidence to be let in by the landholder that second crop was not raised or even if it is raised from the private source of water, it was because of non availability or non supply of water from the authorised source. It is also contended that the moment it is shown that lands are included in the B-Schedule and registered as wet, they are entitled, as a matter of right, to water for raising second crop

unlike the lands which are though included in the B-Schedule and registered as wet, they are entitled, as a matter of right, to water for raising second crop unlike the lands which are though included in the B-Schedule but registered as "dry". If that is so, such lands will have to be classified as "double crop wet lands", and, if private source of water has been used, then the burden is on the land holder to prove that water was not available in the authorised source. For this, reliance is placed on the decision in *The State of A. P. v. K. V. V. S. L. Sakuntala*, 9(1977) 2 APLJ 194: (AIR 1977 NOC 359), wherein our learned brother Ramachandra Rao, J. observed:

"Where the land falls within the description of "double crop wet land" as defined in Section 3 (d) clauses (I) to (iii) the onus lies on the person claiming that all the ingredients of the proviso are fulfilled in order to take it out of the category of land which would otherwise fall within the main definition of double crop wet land".

3. The case chiefly turns upon the construction of relevant provision pertaining to double crop wet land enacted in Section 3 (d) which may be noticed by extraction;

(d) "double crop wet land" means any wet land registered as double crop or compounded double crop wet land in the land revenue accounts of the Government and includes any wet land not so registered- (1) for which in accordance with any scheme of localisation being adopted under any Government source of irrigation water is available in both the first and second crop seasons during a fasli year including the lands covered by Schedule B and Part II of Schedule C appended to the draft rules for the irrigation of lands in the Godavari Western, eastern and Central Deltas published in the Rules Supplement to part II Extraordinary of the Andhra Pradesh Gazette, dated the 16th July, 1962;

xx xx xx

Provided that -

(a) any land entitled to the supply of water from a Government source of irrigation and on which two irrigated crops per fasli year have or a duffassal crop has, not been raised with the use of water from such source, in any four fasli years within a continuous period of six fasli years immediately before the specified date, for want of supply of water from such source".

4. "Double crop wet land" includes not only any wet land registered as such but also includes a land not registered as wet. However, u/s 3 (d) (I) all those lands, whether they are registered as dry or wet, for which according to the scheme of localisation adopted under any Government source of irrigation, water is available in both the first and second crop seasons during a particular fasli years, if two crops per fasli year have been raised with the use of water from a Government source in any four fasli years within a continuous period of six fasli

years immediately before the specified date, viz., 1-1-1975, then such lands will have to be classified as "double crop wet lands". This category of lands includes such of the lands which are included wither in Schedule B or in part II of Schedule C appended to the draft rules for the irrigation of lands in the Godavari Western, Eastern and Central daltas published in the Rules Supplement to part II Extraordinary of the Andhra Pradesh Gazette, dated the 16th July 1962.

5. Now, Rule 6 of the Draft rules is extracted hereunder,

6. Notwithstanding anything in the foregoing rules:-

(1) xxx xxx xxx xxx

(2) the District Collector may at any time, by notification in the District Gazette, direct that any land included in parts 1 (b) and II of Schedule A in Schedule B, or in Schedule C shall not take water for irrigation during any year or during any period of years not exceeding five either in the first crop or the second crop season or in both the seasons, or in any specified part or parts of these seasons, either absolutely or in such circumstances as may be specified in the notification;

(3) xxx xxx xxx xxx

(4) the Government reserve the right, with or without reasons given-

(q) to discontinue, either temporarily or permanently, the supply of water,

(i) in the first crop season, to any land other than registered wet land and,

(ii) in the second crop season, to any land other than wet lands registered as irritable only in the second crop season and not in the first crop season, and ..."

Though it is true that the lands, which are registered as wet and included in Schedule B or part II of Schedule C referred to in the Rule, are entitled to water from the government source of irrigation for two crops, it is quite apparent from Rule 6 (2) that the District Collector is empowered to prohibit the use of water to such lands at any time by notification.

7. Again, two thing, stand out distinct with reference to Proviso 91) to Section 3 (d) which is germane in so far as the facts of this case are concerned. First, two irrigation, crops ought not to have been raised with the use of water from the authorised source in any crucial four fasli years; and secondly this must have been because of want of supply of water from the authorised source, in which case the lands will not be deemed to be double crop wet lands.

8. We may analyse each of the two facts falling under the proviso. If, during the crucial fasli period, no second crop has been raised or even if raised, either partially or fully, with the water from the private source, because of non supply of water from the authorised source, then the lands will not be deemed to be double crop wet lands. Since - and it is common knowledge - landholder will not deprive himself of the benefit of supply of water for the purpose of irrigation, and if the second crop has not been raised at all, or even if it is raised with the supply

of water from the private source, then the non-supply of water from the authorised source, in our view, should be presumed. This is particularly so, because, as is manifest from the aforesaid Rule 6 (4), the District Collector has been empowered to direct, at any time by notification, that any land shall not take water for irrigation during any year. However, the aforesaid presumption would be a reputable one. The Government can displace that presumption. This is more so because the Government and the Government alone is credited with the maintenance of relevant record.

9. A Division Bench of this Court also in *Kalidindi Lakshminarasaraju Vs. State of Andhra Pradesh*, held :

"In C>R.P. No. 1890 of 1976 in which we have delivered judgment (1977) 2 APLJ 49: (AIR 1978 NOC 37) yesterday, we negatived the contention that once a land is included in the B-Schedule it has to be treated as double crop wet land and cultivation rest provided in the proviso (a) of the definition has no application to the lands included in the Schedule B and though duffassal crop could not be raised in any four fasli years within the six fasli years in question for want of supply of water from the source of Government irrigation it is still, to be treated as double crop wet lands, Therefore, as a matter of fact if no duffassal crop was raised in any four fasli years within six fasli years of 1378 to 1383 faslis, in Item 1 to 14, on account of the want of supply of water in the Government source of irrigation they cannot be treated as double crop wet lands. Unfortunately, the Tribunals did not properly consider the evidence on this aspect. The Government must be in a position to show by means of record that during six fasli years in question wither water was available to lands of the petitioner from the Government source of irrigation for the purpose of raising duffassal crops."

10. From the foregoing it is manifest, and we unhesitatingly hold, that in respect of the ;lands, which are registered as wet and included in Schedule B or Part II of Schedule-C appended to the draft rules referred to in Section 3 (d) (I), and on which two irrigated crops per fasli year have not been raised with the use of water from the authorised source in any four fasli years within a continuous period of six fasli years immediately before the specified date, want of supply of water from the authorised source will be presumed and they will be classified as "single crop wet lands" only. The onus is, however, on the Government to displace the presumption to establish the supply of water from the authorised source. The contention of the learned counsel for the respondent must, therefore, be upheld.

11. The view expressed by Ramachandra Rao, J in the *State of A.P. v. K.V.S.L. Sakuntala* (1977 2 APLJ 194: AIR 1977 NOC 359) (*supra*) referred to earlier is therefore overruled.

12. In the result C. R. Ps. Are dismissed. No costs. Advocate's fee Rs. 200/- in each.

13. Petitions dismissed.