
(1997) 10 AP CK 0076

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3497 of 1994

Veeramreddi Nagabhushana Rao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 14-10-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9

Citation : (1997) 6 ALD 746 : (1998) 1 ALT 35

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : I. Nagesh, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Nasir, J.—An important question for our consideration in this Civil Revision Petition is whether the land covered in a lease granted in favour of the 3rd party could be excluded from the declaration under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short "The Act").

2. The Land Reforms Appellate Tribunal by its impugned judgment dated 18-7-1994 made in L.R.A.No. 94 of 1990 while dismissing the present petitioner's appeal observed that the lower Tribunal rightly did not keep reliance on the report of the Commissioner because no sanctity could be attributed to his report in respect of the lands of Panasapadu village and the alleged non-agricultural portions did not find place in the adangal or in the declaration and also because there was no evidence on the record to show as to when the alleged bore-shed was erected. The Tribunal also took into consideration that the electric motor would have been installed in the shed and electricity charges would have been paid and, therefore, the receipts for payment of electricity charges would have been the best evidence to establish that the bore-shed was in existence prior to 1-1-1975. The Court Commissioner was also not examined for ascertaining how he opined that the alleged non-agricultural portions noticed by him were more than 25 years old. The appellate Tribunal, therefore,

held that the lower Tribunal rightly did not place reliance on the report of the Commissioner and rightly refused to exclude the alleged non-agricultural portions from the holding of the declarant..

3. According to the learned Counsel for the petitioner, since no objections were taken against the Commissioner's report, it was binding on all concerned, By relying on the decision of the Division Bench of this High Court in S.R.V.V.V.G.K.Y. Bahadur v. Spl. Tahsildar, 1978 (2) ALJ 80 the learned Counsel for the revision petitioner pointed out that even "tank" was not covered within the definition of "land" u/s 3(j) of the Act and on that analogy the cattle shed was not liable to be included in the declaration, but when the learned Counsel for the petitioner was questioned how none of these reasons were shown in the Declaration for claiming exemption, the submission was that through over-sight it was not shown. In my opinion, this explanation does not render any satisfaction and cannot be accepted as a legally sustainable ground.

4. As regards the Commissioner's Report, the learned Counsel for the petitioner drew my attention to a decision of this High Court speaking through Amareshwari, J., in C.R.P.Nos. 2505 and 2506 of 1980 decided on 17-11-1981, in which it is held as under :-

".....I have seen the commissioner's report, which is placed before me by the learned Counsel for the petitioners. In paragraph 8 of the Commissioner's report it is stated that he inspected S.No. 12/1 and that he found that in an extent of Acs. 2-00 in the north there was no cultivation and the land is covered by pits and that it is not capable for cultivation. Hence it is not correct to say that the Commissioner has not stated that the land in S.No. 12/1 is not covered by a quarry. In view of the Commissioner's report I find that the extent of Ac. 2-00 in S.No. 12/1 being a quarry land is not land within the meaning of Section. 3(j) of the Land Ceiling Act, and hence it cannot be included in the holding of the petitioners."

In the instant case, in my opinion, even if the Commissioner's report is taken at its face value, though not proved, the petitioner can still not taken advantage of the same because those claims were not made directly or indirectly in the declaration. This conduct of the petitioner creates a cloud of suspicion which deprives him from claiming exemption.

5. As regards the claims advanced by the petitioner for excluding the lands covered by agreements of sale- Exs.A1. and A4, one V. Venkata Rao filed a petition on 28-9-1979 stating that he purchased land of an extent of Ac.8-01 cents in S.No. 101 of Thimmapuram village under an agreement of sale dated 8-12-1971 from the declarant and urged the lower Tribunal to exclude the same from the holding of the declarant. One G. Raghava also filed a petition stating that he purchased an extent of Ac.1.94 cents in S.No. 221/1 and Ac. 1-54 cents in S.No. 197/9 of Panasapadu village under an agreement of sale dt. 12-1-1972 and he also urged the lower Tribunal to exclude the same from the holding of the

declarant. One D.Sreerama Chandra Murthy also filed a petition stating that he was the cultivating tenant of the declarant of an extent of Ac. 23.15 cents in Sy.No. 1 and 2 of Ananthavaram and urged that the same be excluded from the holding of the declarant. Fresh enquiry was held by the lower Tribunal and the alleged agreements of sale were rejected by the lower Tribunal. A modified order was passed on 12-5-1980 after implementing the orders of the appellate Tribunal and the High Court determining that the declarant was having 0-9850 standard holdings in excess of the ceiling area. Aggrieved by the above order, the declarant as well as the 3rd parties jointly filed LRA.No. 65/80 which was dismissed on 3-2-1981. The declarant and the 3rd parties thereafter filed C.R.P. Nos. 1134/81 and 1133/81. Both the CRPs were allowed on 13-3-1984 and the matter was remanded to lower Tribunal for fresh enquiry. During the course of fresh enquiry, a Commissioner was caused to be appointed at the instance of the declarant for conducting inspection of the lands in question. The Commissioner after conducting inspection submitted his report on 29-4-1988. After considering the material on record, the lower Tribunal disbelieved Exs. A-1 and A-4-agreements of sale and refused to exclude the land covered by the same from the holding of the declarant. The tenancy set up by the 3rd parties covered by Ex.A-6 was also disbelieved and the Tribunal refused to exclude the extent covered by Ex. A-6 from the holding of the declarant and finally passed an order determining that the declarant's family holding of 0-9850 standard holding was in excess of the Standard holdings (sic. ceiling area).

6. The appellate Tribunal in the proceedings before him did not find any merit in the contentious raised by the appellant before him. As regards the Commissioner's report, the appellate Tribunal recorded a finding that the report made by the Commissioner to the effect that an extent of Ac.20-15 cts. in Sy. Nos.1 and 2 of Ananthavaram village was covered by hillock and was unfit for cultivation was not found to be true in view of the fact that the land was alleged to have been leased out for grazing purpose under Ex.A-6 to PVV.6 as early as in 1971. If even grass could not be grown in the said land, it could not have been given on lease for grazing under Ex. A-6 and in that view of the matter, the appellate Tribunal agreed with the views expressed by the lower Tribunal that no reliance could be placed on the report of the Commissioner.

7. The appellate Tribunal also took into consideration the fact that the Commissioner was not examined so as to verify whether the contents of his report had any element of truth in it. The declarant also did not give evidence regarding the non-agricultural portions and did not even examine the ryots of the adjoining land so as to ascertain since how long the alleged non- agricultural portions were in existence.

8. On a close scrutiny of the material on record and the concurrent findings of the two lower Tribunals as well as the submissions made by the learned Counsel for the rival parties before this Court, I am overwhelmingly satisfied that there is no cause for interference with the impugned judgment and order passed by the

appellate Tribunal.

9. Reverting to the authorities cited by the rival parties, the first in array is the decision of the learned single Judge of this High Court in C.R.P. Nos. 2505 and 2506/80 in which the learned single Judge accepted the Commissioner's report that in an extent of Ac.2-00 in the North there was no cultivation and the land was covered by pits and that it was not capable of being cultivated. In the instant case, however, two conflicting propositions have come on record, one in the form of the Commissioner's report stating that the concerned portion of the land was not suitable for agricultural purpose and the second from the case advanced by the declarant that the said portion of land had already been in possession of 3rd parties for carrying on agricultural operations before the Act in question came into force. It is these conflicting and contradictory propositions which precludes this Court from accepting the declarant's case. Hence, the facts of this case being different on material aspect, the afore-said decision of the learned single Judge is not applicable to the facts of the present case.

10 In the case of S.R.V.V.V.C.K.Y. Bahadur (1 supra) it is held that a tank was not a land since a tank was called a tank and not called a land. This principle is sought to be applied to the facts of the present case by way of analogical deduction that a cattle shed could not be treated as the vacant land. However, the existence of cattle shed prior to the introduction of the Act itself was a doubtful proposition and the said story regarding the existence of cattle shed was subsequently created with a view to escaping from the clutches of the Agricultural Land Ceiling Act. While, therefore, there could be no dispute with regard to the meaning given to a tank in the afore-said decision of this High Court, the claim advanced by the declarant incurring the infirmity of being a doubtful proposition of fact, deprives the present petitioner from taking advantage of the said principle.

11. A great emphasis was laid on behalf of the petitioner during the course of the argument before this Court that there was absolutely no reason whatsoever to ignore the Commissioner's report when no objections were taken by the respondent against the truth of the report. On scrutiny of the contents of the Commissioner's report it prima facie appears that apart from giving the description of the site inspected by him. He has expressed his opinion on several matters. There is no constraint on a proposition that Commissioner appointed by a Court to take inspection of any site in dispute is not expected to express his opinion, because expression of an opinion warrants an expert skill or intellect which the Commissioner may or may not have. In such cases, only an expert opinion could be taken into consideration and any opinion expressed by the Commissioner who is not an expert on the subject cannot carry any probative value.

12. For the purpose of satisfying ourselves on this aspect, let us look at certain aspects of the Commissioner's report. In the 3rd paragraph of the report, the Commissioner has said that S.No. 1 of Anantharam village consists of Ac. 23-15

cts. and the same belongs to the declarant: This expression includes a finding of the Commissioner that the land in question belonged to the declarant, which the Commissioner has no authority to do. In another sentence, the Commissioner said" it is completely a hilly area. It is totally and absolutely uncultivable." The 1st part of this sentence could be accepted as a statement of fact, but the subsequent part expressing an opinion that it was totally and absolutely uncultivable could not be accepted because it is an expression of opinion for which obviously the Commissioner did not possess the necessary expertise and the Commissioner should have refrained from expressing such unwarranted opinion. Thereafter, the Commissioner goes on to say that" I do not hesitate to say that it can't be ploughed even. It is non-agricultural as it appears as a single "block of stone. It is of such a nature of land that could not be presumed to have been ever put to cultivation" . This entire statement is an expression of opinion which the Commissioner has no business, to indulge into. The Commissioner by resorting to expressing such opinion has endeavoured to display his own skill, but we are not concerned with the personal skill and expertise, if any, possessed by the Commissioner, unless the assignment given to the Commissioner was to express an opinion for which the Commissioner possessed necessary qualifications or expertise. The subsequent portion in the 3rd paragraph of his report makes it clear that he indulged into making enquiry by examining certain persons, which he was not expected to do and to arrive at a conclusion one way or the other. No duty was cast upon the Commissioner to examine witnesses and to arrive at a conclusion. It was the responsibility of the concerned Judicial Officer to arrive at a conclusion one way or the other on the basis of the statements contained in the Commissioner's report regarding the physical features of the land inspected by the Commissioner. There are many other expressions of opinion and conclusions arrived at by the Commissioner, but I believe that the contents of the report which have been discussed above are sufficient to castigate the report as devoid of an authority and, therefore, the contents thereof, cannot be taken into consideration even if the adverse party has not lodged its objections against the contents of the Commissioner's report.

13. For all the above reasons, therefore, I do not find any substance in the Civil Revision Petition filed by the petitioner and the same is dismissed.

No costs.