
(1998) 03 AP CK 0092
In the Andhra Pradesh High Court
Case No : CRP No. 1859 of 1994

Y. Narayana Murthy and others APPELLANT
Vs
State of Andhra Pradesh and another RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 8
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 16(5)(b), 16(7)

Citation : (1998) 4 ALD 85 : (1998) 3 ALT 829

Hon'ble Judges : Syed Saadatullah Hussaini, J

Bench : Single Bench

Advocate : Mr. M.V. Durga Prasad, for the Appellant; Government Pleader for Land Ceiling, for the Respondent

Judgement

1. Heard the learned Counsel for the petitioners Mr. M. V. Durga Prasad.
2. Mr. M.V. Durga Prasad, learned Counsel for the petitioners submits that the petitioners are real brothers of Respondent No.2. Respondent No.2 filed declaration in LCC No. 1146/ELR/75 u/s 8 of the A.P. Land Reforms Act on behalf of his family unit consisting of himself, his wife, a minor son and a minor daughter. The Primary Tribunal by its order dated 15-11-1976 determined the holding of Respondent No.2 and held that he holds an extent of land equivalent to 0.2914 and later under order dated 18-12-1978 to 0.2800 S.H., in excess of the ceiling area. This holding was arrived at in the light of the orders of the Land Reforms Appellate Tribunal in LRA No.593/77, dated 4-12-1978.
3. Against the said order, Respondent No.2 filed a revision before this Court in CRP No.5499/1979 but the same was dismissed on 4-3-1980 and the order of the lower Tribunal was confirmed. The Land Reforms Tribunal after issuing Form VI notice selected some of the land specified in the schedule, after following the due procedure, against which, Respondent No.2 filed LRA No.23/85 and the same was dismissed on 21-6-1984 holding all opportunities were given and the

relevant rules were complied with. Later, he filed a petition before the Primary Tribunal under Rule 16(5)(b) of the A.P. Land Reforms Act alleging that GO. Ms. No.813, dated 19-6-1975 is applicable to the lands situated in drought prone area and the benefit of holding of 12 1/2 enhancement of ceiling area has to be given to him. The Primary Tribunal has given benefit of the said G.O. and redetermined the holding of the Respondent No.2 at 0.1586 S.H. to be in excess of the ceiling area. After issuing relevant notices, the Government proposed to take over the lands of Ac.6.68 in RS No.85/2 of Krishnapuram village. Again the second respondent preferred an appeal in LRA No. 14 of 1989 and the same was dismissed on 14-12-1992.

4. During the pendency of the appeal LRA No. 14 of 1989, the petitioners have filed the appeal LRA No.1 of 1993, alleging that Ac.46.40 situated in RS No. 85 of Krishnapuram village is a joint family property wherein each of them has a share, and that the Primary Tribunal is not correct in computing the land solely in the holding of Respondent No.2. In fact, Respondent No.2 has only 1/8th share, and under the guise of the order of the Tribunal the Government is about to take their lands. Since they have no notice at any stage of the proceedings, the entire proceedings are not binding on them and prayed to set aside the determination of the land in favour of Respondent No.2, and the same has to be redetermined.

5. The learned Counsel for the petitioners submitted that originally these lands were part of the estate and lease was granted in the name of Respondent No.2 for the benefit of the entire joint family and not for his personal benefit, but as the petitioners are the natives of Krishnapuram village, due to their avocation, they are residing at different places, and as such, they did not file declaration as contemplated under the A.P. Land Reforms Act though they were enjoying the benefits from the land as co-sharers. It is also urged before me that Respondent No.2 has sold certain portions of the land in 1986 and in the sale deeds the petitioners are shown as co-vendors along with Respondent No.2 under Exs.A1 and A2. That itself shows that the property is joint family property and the lease and the patta which stood in the name of Respondent No.2 was actually for the benefit of the family. As such, the order passed by the Tribunal in favour of Respondent No.2 has to be redetermined.

6. He relies on sub-section (7) of Rule 16 of the A.P. Land Reforms Rules, 1974 which reads as under :

"Any person, other than a party who satisfies the Revenue Divisional Officer, the District Collector, Tribunal or the Appellate Tribunal that he has substantial interest in the matter, may at any time during the pendency of the proceedings, be permitted to appear and be heard and to adduce evidence and cross-examine witnesses."

7. By virtue of the above rule the petitioners have a right to appear, on any such of the proceedings and they have appeared when the LRA filed by Respondent No.2 was pending before the lower appellate Tribunal and no notice was served

to them and they had no knowledge of the pendency of the proceeding before the Tribunals and that their rights in the land has to be determined as per their shares in the joint family property.

8. This is vehemently opposed by the learned Government Pleader for Land Ceiling and she submits that there is no truth in the submission that the lease of the land originally obtained in the name of Respondent No.2. The lease was in his name after the abolition of "States", and patta itself shows the name of Respondent No.2. Respondent No.2 enjoyed the property in his own right and filed the declaration claiming as family unit consisting of himself, his wife, a minor son and a minor daughter. There is nothing on record to show that the said lands were joint family property and petitioners are the co-sharers. There is nothing on record to show that the petitioners are co-sharers and enjoyed the lands, when the second respondent was unsuccessful in his contest to save the excess land. The brothers of second respondent have set up a plea alleging to be the co-sharers and they are entitled for a share of one-seventh each in the land.

9. The lower appellate Court has considered the case in detail and has come to the conclusion that there is no proof of other family members having held their possession over the lands. In the sale deeds which Respondent No.2 executed for a part of the land and for the very same land the petitioners are claiming and also parties, the recitals confirms that the second respondent has acquired the property and only to get over the ceiling proceedings, they have approached this Court at this belated stage.

10. I have not been persuaded to take a different view than the Land Reforms Appellate Tribunal took, for there is no prima facie independent proof to come to a conclusion that the lease was obtained for the benefit of the joint family.

11. In the absence of sharing or possession of the petitioners over the property, the petitioners themselves have accepted the recitals in Exs.A1 and A2, the sale deeds, which Respondent No.2 has executed, that the property is self-acquired property which belies the contention of the petitioners that the property was originally obtained for the benefit of the joint family.

12. In the above circumstances, and in view of the fact that the second respondent fought tooth and nail from 1975 to 1992 to save the lands, I do not see any merits in the CRP. Accordingly the same is dismissed. No costs.