
(2016) 09 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4414 of 2007

Yamajala Muralidhar

APPELLANT

Vs

Agent to Government (District Collector)

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 — Regulation 2(b),
Regulation 3(3)(a)(ii)
Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALT 587 : (2017) 1 AndhLD 291

Hon'ble Judges : Sri P. Naveen Rao, J.

Bench : Single Bench

Advocate : Govt. Pleader for General Administration, for the Respondent No. 6;
Sri Hari Sreedhar, Advocate, for the Petitioner; Govt. Pleader for Social Welfare,
for the Respondent Nos. 1 to 3 and 5

Final Decision : Disposed Off

Judgement

Sri P. Naveen Rao, J. - Petitioner claim to be the owner and possessor of land in Sy.No.62/2A admeasuring Ac.2.00 situated at Bhadrachalam, Khammam District. The Agency Divisional Officer, Bhadrachalam (2nd respondent) initiated proceedings in L.T.R. Case No. 8/BCM/ 2005 under Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation, 1959) basing on the report of the Mandal Revenue Officer, Bhadrachalam, alleging that Dr. A. Mohan Rao (4th respondent) and others have been in possession of the above said property belonging to the petitioner. Disregarding the defence of the petitioner that he did not transfer the property to another person and that he is in possession and enjoyment and therefore the provisions of Regulation, 1959 are not attracted, the 2nd respondent passed eviction order on 21.11.2006. Aggrieved by the said eviction order, petitioner preferred C.M.A. No. 3 of 2007 before the Agent to Government (District Collector) (first respondent). By order dated 27.1.2007 in I.A. No. 4 of 2007, the Agent to the Government transferred C.M.A. No. 3 of 2007 to the Court of Additional Agent to Government/Project Officer, ITDA,

Bhadrachalam (5th respondent) for trial and disposal of the appeal. Aggrieved thereby, this writ petition is filed.

2. Heard learned counsel for the petitioner Sri. Hari Sreedhar, learned Government Pleader for Social Welfare for respondents 1 to 3 and learned Government Pleader for General Administration for respondent No. 5.

3. At the outset it is to be noted that though the petitioner also challenged G.O.Ms. No. 274 dated 15-06-2002, during the course of hearing, Sri Hari Sreedhar did not press the prayer to that extent and in fact placed reliance on the said G.O., to challenge the order of Agent to Government transferring the C.M.A. No. 3 of 2007 to Additional Agent to Government. Further, as this revision is filed against interlocutory orders in the pending appeal, submissions are made only on the issue of competence of Agent to Government to transfer appeal pending before him to Additional Agent to Government and competence of the Additional Agent to Government to decide his appeal.

4.1. Sri Hari Sreedhar submitted that the Agent to Government is wholly incompetent to transfer the appeal pending before him to the Additional Agent to Government and therefore, the order impugned is ex facie illegal and liable to be set aside on the said ground alone.

4.2. He would further submit that the Agent to Government relied on orders of Government issued in G.O.Ms. No. 274, General Administration (Special.A) Department dated 15.06.2002. He would submit that G.O.Ms. No. 274 does not vest power in the Agent to Government to transfer appeal pending before him, arising out of decision of Agency Divisional Officer, to Additional Agent to Government. Therefore, the transfer is not sustainable.

4.3. He would further submit that though there is no reference to Regulation 2(b) of Regulations, 1959, the orders in G.O.Ms. No. 274 dated 15.06.2002 are issued in exercise of the said power and therefore, they are valid. In terms of the orders issued in G.O.Ms.No.274 dated 15.06.2002, the power to entertain appeal and to decide by the Additional Agent to Government is confined to a decision made by Special Deputy Collector, (Tribal Welfare), whereas the order against which the petitioner filed appeal before the Collector was by the Agency Divisional Officer. Thus, the Additional Agent to Government does not have power to deal with the appeal and therefore, the Agent to Government erred in transferring the appeal.

4.4. He would further submit that even though the power of the Agent to Government to transfer appeals/original cases to Additional Agent to Government was upheld by this Court in W.P.No.1241 of 2005 and batch, the said judgment has no application to the facts of this case since the appeal pending before Agent to Government was against Agency Divisional Officer and not against Special Deputy Collector (Tribal Welfare).

4.5. In support of his contention, learned counsel for the petitioner has placed reliance on the definitions provided in Regulation 2(b)&(c) and provision in

Regulation 3(3)(a) of Regulation, 1959.

5.1. Learned Government Pleader for Social Welfare submits that the Additional Agent to Government is vested with all powers that can be exercised by the Agent to Government by virtue of the notification issued by his Excellency the Governor in exercise of power under paragraph 5(1) of 5th Schedule to the Constitution. Once power is vested with the Additional Agent to Government to hear the appeal, the District Collector has rightly transferred the appeal pending before him.

5.2. He would submit that the entire history of delegation of powers either to exercised exclusively by the District Collector in the plain areas and in Agency areas and delegation of such powers in the agency areas to the Project Officers and other officers was thoroughly analysed and judgment was rendered by the Division Bench of this Court in the case of Kurapati Lakshmaiah and others v. Additional Agent to Government and Project Officer, ITDA, Bhadrachalam, Khammam district and others (W.P.No.1241 of 2005 and batch). The point in issue raised in this writ petition was considered and decided by the Division Bench and therefore, this writ petition is liable to be dismissed following the decision of the Division Bench.

5.3. She would further submit that the decision of Government in G.O.Ms.No.274 is only executive order emanating from the discussions in the State Level Workshop of Indian Administration Service Officers and it is only intended to clarify/specify the powers exercisable by the Project Officers and it cannot override the provisions made in exercise of powers vested in the Governor under paragraph 5(1) of 5th Schedule to the Constitution. The Additional Agent to Government is competent to act as an appellate authority against all the decisions taken by the Subordinates including the Agency Divisional Officer and the Special Deputy Collector (Tribal Welfare) and, therefore, the Agent has transferred the pending appeal in valid exercise of powers.

6. The point for consideration is, whether Agent to Government is competent to transfer appeal pending before him arising out of decision of Agency Divisional Officer to the Additional Agent ?

7.1. To appreciate the rival contentions it is necessary to analyse the relevant provisions. They read as under:

7.2. Regulations 2 (b)&(c) and 3 (2)(a) and 3(b) of Regulations, 1959 read as under:

"Reg.2. Definitions:

(b) "Agent" means the person designated by the State Government as an "Agent to the Government" in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam of Mahaboobnagar as the case may be;

(c) "Agency Divisional Officer" means the person designated by the State Government as "Agency Divisional Officer" for the purposes of this Regulation;

Reg.3. Transfer of immovable property by a member of a Schedule Tribe:-

(2)(a). Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by any one interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer of his heirs.

3(a). Subject to such conditions as may be prescribed, an appeal against any decree or order under sub-section (2), shall lie within such times as may be prescribed:-

(i) if the decree or order was passed by the Agent, to the State Government;

(ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and

(iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed

7.3. Notification issued in exercise of power under Paragraph 5(1) of the fifth schedule to the Constitution of India, published vide G.O.Ms.No.193, Revenue (Ser.I) Department, dated 17.4.2002 read as under:

"6. Accordingly, the following Notification will be published in Extraordinary issue of the Andhra Pradesh Gazette, dated 19.04.2002.

Notification

"In exercise of the powers conferred under paragraph 5(1) of the Fifth Schedule to the Constitution of India read with Section 3 of the Andhra Pradesh District Collector Powers (Delegation) Act, 1961 (Act No. XXXII of 1961) and in modification of the Notification issued in G.O.ms.No.19, Revenue (W) Department, dated the 8th January, 1987, the Governor of Andhra Pradesh hereby authorise the Project Officers, Integrated Tribal Development Agencies, Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari, Khammam, Warangal and Adilabad Districts in so far as the Scheduled area is concerned, to exercise all the powers vested in the District Collectors by or under the laws mentioned below:

(1) The Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 (Regulation No. 1 of 1959)

7.4. To the extent relevant G.O. No. 274 reads as under:

"4. Government after careful consideration of the matter and in accordance with the recommendation made by the State Level Workshop, issue the following

orders:

(1) & (2) xxxxxxxx

(3) Such of the powers which are exercised by the Collectors/Joint Collectors/ District Revenue Officers as per G.O.Ms.No.77, Revenue, dated 22.1.1968 and shown in the appendix to this order shall be exercised by the Project Officers of ITDAs in the Districts of Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari, Khammam, Warangal and Adilabad in so far as the tribal sub plan areas are concerned.

(4) Necessary notifications in this regard have already been issued from Revenue Department to the extent of agency powers vide G.O.Ms.No.193, Revenue (Ser.I) Department, dated 17.4.2002. Whereas to the extent of powers of District Collectors under AP (Andhra Area) Preservation of Private Forest Act (Act. XII of 1954), the AP Forest Manual and the AP Forest Act, 1967 (Act 1 of 1967) in sub plan area and under the AP Public Health Act, 1939 (Act. III of 1939) and under Cooperative Societies Act, 1964, Weights and Measures and Fisheries, the respective Departments shall immediately issue orders delegating the powers to Project Officers.

8.1. G.O.No.274 was issued as a consequence to deliberations in the State Level Workshop of Indian Administrative Service Officers of the State on Annual Performance Review. Group of Officers formed to discuss and suggest measures to streamline the functioning of various departments in the Agency Areas seem to have made suggestions to strengthen the single line administration system in ITDA areas and recommended exercise of disciplinary powers by Project Officer of ITDA and heads of line Departments in ITDA, over the subordinates working in Agency Areas. Taking note of said suggestions, Government issued orders in G.O.Ms.No.274.

8.2. It is to be noted that Government was conscious of notification under paragraph 5 (1) of V Schedule to the Constitution, published vide G.O.Ms. No. 193. A cumulative reading of this G.O., would make it clear that it is in furtherance to notification under paragraph 5 (1) of the V schedule to the Constitution and seek to codify powers exercisable by the Project Officer. What is incorporated in G.O. No. 274 is in addition to powers vested in Project Officer by virtue of above notification and not in derogation. G.O.Ms. No. 274 also specifies that Additional Agent to Government is Appellate Authority against decisions of Special Deputy Collector (Tribal Welfare). It only emphasizes what is obvious in accordance with Regulation 3 (3)(a). Without regard to G.O.Ms. No. 274, the Additional Agent to Government is vested power to act as Appellate Authority against all the decisions of Subordinate Authorities. G.O.ms.No.274 does not amount to curtailing the appellate jurisdiction of Additional Agent to Government and confine such jurisdiction only against orders of Special Deputy Collector (Tribal Welfare) . No such inference can be drawn from G.O.Ms.No.274. The background deliberations as reflected in the G.O., would show that G.O., aims at

strengthening the hands of Project Officer, but not to curtail. It intends to relieve the responsibilities of District Collector from administering the Agency Areas. In this context, it is also appropriate to note that in paragraph 3(2) of Appendix to G.O.Ms. No. 274, the Project Officer is vested all powers flowing from Regulations, 1959.

8.3. Even assuming what is contended is valid, G.O. No. 274 cannot override the notification issued in exercise of power under paragraph 5(1) of Fifth schedule to the Constitution and if there is a conflict between the Government Order and the notification, the notification shall prevail. A plain reading of notification would show, Additional Agent to Government is vested with all powers either to exercised exclusively by the Agent to Government including the jurisdiction to consider appeal arising from the decision of Agency Divisional Officer or Special Deputy Collector (Tribal Welfare).

8.4. There is no merit in the contention of Mr. Hari Sreedhar that G.O.Ms. No. 274 was issued in exercise of power under Regulation 2(b). Regulation 2 (b) only defines term "Agent to Government". It does not authorise Government to prescribe jurisdiction and powers of "Agent to Government". Regulation 3 prescribes powers of "Agent to Government" and other authorities. Regulation 3 cannot be amended by an executive order. History of evolution of role of Project Officer in Agency Area as chronicled by Division Bench in Kurapati Lakshmaiah and others would show that exercise of all powers either to exercised by Revenue authorities goes back to 14.8.1986 when G.O.Ms. No. 434 was issued, where under he was designated as Additional Agent. Additional agent steps into the shoes of Agent and, therefore, derives all powers as vested in the Agent under Regulation 3.

9. In Kurapati Lakshmaiah and others, batch of writ petitions are filed challenging the validity of notification issued vide G.O.Ms. No. 193 dated 17.04.2002. Though in all the writ petitions the main challenge was to G.O.Ms. No. 193, but consequential grievances were not same. In some of the writ petitions, jurisdictional Special Deputy Collector (Tribal Welfare) ordered ejection from the respective lands and directed to restore to the Government or persons belonging to Scheduled Tribes. Appeals filed under Section 3(3)(a)(ii) of the Regulations before the Agent to Government were transferred by the Agent to Government to the Additional Agent to Government. In some cases, Additional Agent dismissed the appeals. In some cases, against dropping of action for eviction by the original authority, appeal was preferred and the Additional Agent issued notices for hearing of the appeals. In some cases, condone delay applications in filing the appeals were rejected by the Additional Agent. In one case, order of Agent to Government transferring the appeal to the Additional Agent was also challenged.

9.1. The Division Bench posed four points for its consideration. They read as under:

(1) Whether a notification issued by the Governor of State under Paragraph 5(1) to Fifth Schedule to Constitution of India shall have no effect until assented by the President of India?

(2) Whether Section 3 of the District Collector's Powers (Delegation) Act, 1961 (Act No. XXXII of 1961) would not apply to Regulation made by the Governor under Paragraph 5(2) of the Constitution of India?

(3) Whether the Government of Andhra Pradesh cannot designate Project Director, ITDA, as Additional Agent to Government in Scheduled Areas?

(4) Whether the District Collector/Agent to Government is not entitled to transfer cases pending before him to Additional Agent to Government (Project Director, ITDA)?

9.2. Insofar as this case is concerned, the points 3 and 4 are relevant.

9.3. On detailed analysis of various provisions and Government Orders issued from time to time, Division Bench observed that by virtue of G.O.Ms. No. 193, Project Officers in Agency Areas are designated as Agents to Government for the purpose of Regulation 1 of 1959 and such designation does not in any manner, violate law. Division Bench held on points 2 and 3 that "this Court holds that by reason of the notification, issued under paragraph 5(1) of V schedule, Section 3 of the Delegation Act is made applicable to scheduled areas regulation made under paragraph 5(2) of V schedule and that any officer - in this case, Project Officers of ITDAs; can be designated as Additional Agent to the Government. Such designation does not violate any law nor affects the right of the citizens, who are regulated by various laws in scheduled areas".

9.4. In point no.4, Division Bench considered the contention of the competency of the Agent to Government to transfer appeals pending before him to the Additional Agent. Division Bench observed that "There cannot be any doubt that after issue of impugned notification on 17.04.2002, Project Officers as Additional Agents can always entertain the Appeals under Section 3(3)(a)(ii) because he is the Agent for the purpose of Regulation and for the sake of convenience, he is designated as Additional Agent".

9.5. Division Bench further observed that "The important thing to be noticed is that under Rule 11(2), the Agent can transfer original suit or appeal pending in any other court of equal or inferior Court within District. On a true interpretation of Rule 3(1) read with Rule 11(2), it must be held that the power of the Agent to transfer suits and appeals takes in its fold the power to transfer appeals pending before him to an Additional Agent. The District Collector as Agent has exercised regulatory powers, illegality cannot be attributed to his action in transferring appeals pending before him to Additional Agent".

9.6. Division Bench further observed as under:

"Therefore, this Court has no doubt that when the Additional Agents (Project

Officers) exercise powers of District Collectors (conferred on them under G.O.Ms.No.77, dated 22.01.1968) under the Regulation, they exercise concurrent jurisdiction and so as to facilitate speedy disposal of cases and achieve maximum efficiency in the Agency Administration, if the Collector transfers pending appeals, the same cannot be invalidated nor faulted. Such action of the District Collector in transferring cases to Project Officers acting as Additional Agents is justified in view of various statutes in force in the agency areas but also various Government Orders. The same is in tune with the purpose with which the Government issued various orders to ensure efficient single line administrative system, which is need of the hour. We accordingly hold on point No. 4."

9.7. Division Bench noticed the Government Orders in G.O. No. 274. Division Bench observed that the orders in G.O.Ms.No.274 were issued only to strengthen administrative system in agency areas.

9.8. Feeble attempt was made by Mr. Hari Sreedhar contending that before the Division Bench there was no case wherein the decision of Agency Divisional Officer was under challenge before the Agent to Government and the same was transferred to Additional Agent and, therefore, said decision has no application. In view of the categorical finding recorded by the Division Bench holding that the Agent to Government is competent to transfer appeals filed under Regulations 3(3)(a)(iii) to the Additional Agent to Government without making any distinction, the contention of the learned counsel for petitioner cannot be countenanced.

10. In the above analysis, there is no error in the decision of the Agent to Government made in I.A. No. 4 of 2007 in C.M.A. No. 3 of 2007 transferring the CMA to the Additional Agent to Government. The writ petition is accordingly dismissed. However, since stay of dispossession was granted by this Court on 05.03.2007, it shall operate till disposal of the appeal by the Additional Agent to Government.

11. Miscellaneous petitions if any pending shall stand closed. No costs.