(2003) 5 ALD 279 : (2003) 3 APLJ 57

Andhra Pradesh High Court

Case No: Writ Petition No. 15761 of 1994

Bayyapureddy Appala Naidu		APPELLANT
	Vs	
Agent to Government and Collector and Others		RESPONDENT

Date of Decision: July 1, 2003

Acts Referred:

- Agency Tract Interest and Land Transfer Act, 1917 - Section 2(a), 2(c), 4, 7
- Andhra Pradesh (Scheduled Areas) Land Transfer Regulation Act, 1959 - Section 3, 3(1), 3(3)

Citation: (2003) 5 ALD 279 : (2003) 3 APLJ 57

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: A. Rangacharyulu, for the Appellant; Government Pleader for Social Welfare for Respondent Nos. 1 and 2 and K. Subrahmanyam for Respondent Nos. 4 to 7, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.
The petitioner filed this Writ Petition seeking writ of certiorari to quash the order in A.S. No. 67 of 1988 dated 3.7.1994 passed by the Agent to the Government and District Collector, Visakhapatnam, the 1st respondent herein. Be it noted, the said order came to be passed in exercise of the appellate powers of the 1st respondent under Sub-section (3) of Section 3 of the A.P. Scheduled Areas Land Transfer Regulations 1 of 1959 (hereafter called 1959 Regulations).

2. The facts leading to filing the present Writ Petition may be summarized in brief:

3. The petitioner purchased an extent of Acs.5-58 cents under a registered sale deed dated 11.5.1956 (registered on 14.5.1956) from the 3rd respondent and others. Some time in late 1970s, the 3rd respondent and others filed an application before the 2nd respondent to declare the sale transaction between the petitioner and others as void on the ground that the vendors belong to Scheduled Tribes and the petitioner is a non-tribal. The 2nd respondent, by order dated 24.12.1979 in L.T.R. No. 501 of 1979, passed orders declaring the sale transaction between the petitioner and Batchala Sanyasi and others as void. The petitioner carried the matter by way of appeal under Sub-section (3) of Section 3 of the 1959 Regulations to the 1st respondent, who, by order dated 21.6.1980, remanded the matter to the 2nd respondent.

4. The 2nd respondent, by order dated 13.5.1986, again declared the sale transaction void. It was contended before the 2nd respondent by the 3rd respondent and others that they belong to Mala caste, which is a Hill Tribe, and, therefore, as per Section 4 of the Agency Tract Interest and Land Transfer Act, 1917 (hereafter called the ''1917 Act''), the transfer of Immovable property situated in Agency Tracts by a member of Hill Tribe to a non-tribal person is null and void. The 2nd respondent believed the 3rd respondent and others and passed orders declaring the transaction void. Aggrieved by the same, the petitioner preferred an appeal being A.S. No. 67 of 1988 before the 1st respondent under Sub-section (3) of Section 3 of the 1959 Regulations. During the pendency of the appeal before the 1st respondent, Batchala Sanyasi died and his legal representatives were brought on record. The 1st respondent, by impugned order, came to a conclusion that respondents 4 to 7 (legal representatives of 3rd respondent) are Harijans belonging to Mala caste, which is a Hill Tribe as per the 1917 Act, and, therefore, the sale by the Hill Tribes non-tribals is void. Accordingly, the appeal was dismissed. Be it noted that when the matter was pending before the 2nd respondent after remand, respondents 4 to 7 also contended that they belong to Valmiki caste, which is a Scheduled Tribe as per the Constitution of India (Scheduled Tribes) Order, 1950 (hereafter called the Scheduled Tribes Order) as amended from time to time. Be it also noted that the 1st respondent, however, did not consider the same and proceeded on the footing that respondents 4 to 7 who were Malas, are Hill Tribes.

5. By the time the petitioner filed appeal before the 1st respondent, it appears, possession of the land was taken. Therefore, along with the Writ Petition, he filed an application seeking direction to the respondents not to assign the land. This Court, by order dated 5.9.1994, directed respondents 1 and 2 not to assign the land to anybody. The said order was made absolute by order dated 6.2.1995.

6. The Writ Petition, was opposed by respondents 1 and 2 as well as respondents 4 to 7 by filing counter-affidavits.

7. While justifying and sustaining the impugned order, the District Revenue Officer, who filed the counter-affidavit on behalf of respondents 1 and 2, states that the land in question originally belongs to Lothas family, who belong to Bagata caste, a Scheduled Tribe. They sold the land to Batchala family in the year 1951, who, in turn, sold the property to the petitioner. According to the provisions of the 1917 Act, the transaction by Lothas family in favour of Batchala family in 1951 is void. Subsequent sale by Batchala family in favour of the petitioner is also rendered void. The petitioner did not obtain any permission from the District Collector though the District Collector is the authorized Officer, and, therefore, the transaction is not saved.

8. In the counter-filed by the 6th respondent, it is stated that they belong to Valmiki community and not Harijans and, therefore, as per the 1959 Regulations, as amended by regulation 1 of 1970, the sale deed by Batchala family in favour of the petitioner, executed in 1956, is void. It is also stated that inasmuch as the impugned order does not order restoration of the land in favour of respondents 4 to 7, the respondents 4 to 7 have preferred a revision u/s 6 of the 1959 Regulations, which is pending before the Government. Therefore, they contend that the Writ Petition is not maintainable.

9. Sri A. Rangacharyulu, learned Counsel for the petitioner placed reliance on the rules under the 1917 Act made by the Governor-in-Council in exercise of the power conferred by Section 7 of the 1917 Act, in support of his contention that Malas are notified as Hill Tribes only in Godavari district and not in Visakhapatnam District. Therefore, the learned Counsel submits that the order passed by respondents 1 and 2 cannot be sustained. Secondly, the learned Counsel would submit that even if respondents 4 to 7 or their fore-fathers are treated to be Valmikis, as Valmiki community was notified as Scheduled Tribe for the purpose of the Scheduled Tribes Order with effect from 25.9.1956 by reason of the Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1956, the 3rd respondent family cannot be treated as Scheduled Tribes as on that date. Thus, Section 3 of the 1959 Regulations is not attracted. Aliernatively, the learned Counsel submits that what was prohibited in the 1917 Act was the transfer of Immovable property by a person belonging to Hill Tribes to non-Hill Tribes and what was prohibited under the 1959 Regulations, as amended by the 1970 Regulations, is a transfer by a Scheduled Tribe person to a non-tribal. As the transaction dates back to 1956, Regulation 1 of 1970 has no retrospective operation and, therefore, the transactions prior to 1959 are saved. Reliance is placed on a judgment of the Apex Court in Dy. Collector and Another Vs. S. Venkata Ramanaiah and Another,

10. Learned Assistant Government Pleader for Social Welfare department and Sri Kanakaraju, learned Counsel for respondents 4 to 7 reiterated their contentions as taken in the counter affidavits.

11. The question that arises for consideration is whether Malas residing in Visakhapatnam District are notified as Hill Tribes for the purpose of the 1917 Act. An incidental question would also arise for consideration as to whether a transfer by a person

allegedly belonging to Valmiki community prior to 25.9.1956 is rendered void by reason of Section 3 of the 1959 Regulations as it stood prior to amendment of the said regulations by Regulation 1 of 1970.

12. The Agency Tracts Interest and Land Transfer Act, 1917, in pith and substance, is an Act to regulate the rate of interest on the transfer of land in Ganjam, Vizagapatnam and Godavari Agency Tracts. Section 2(a) defines "Agency Tracts" as to mean scheduled districts and included within the districts of Ganjam, Vizagapatnam and Godavari. Section 2(c) defines "hill tribes" as to mean any body or class of persons residents in the Agency Tracts that may from time to time be notified as such for the purpose of the Act by the Governor-in-Council (as it stood prior to Adaptation Order, 1937) Section 7 empowered the Governor-in-Council to make rules to carry out the purpose of the Act. In exercise of such power the Governor-in-Council issued Order No. 187, Home (Judicial) dated 22.1.1918 making rules to regulate the transfer of land in the Agency tracts of Ganjam, Vizagapatnam and Godavari Districts. By Rule 1 thereof, the Hill Tribes for the purpose of the 1917 Act were notified separately for Ganjam, Vizagapatnam and Godavari districts. Four communities/castes were notified as Hiil Tribes in Ganjam, whereas six communities were notified as Hill Tribes in Godavari Districts. This included Malas and Madigas residing in Godavari District. What is interesting is, though as many as 40 communities in Visakhapatnam district were notified as Hill Tribes, Malas and Madigas are conspicuous by their absence in the list. Therefore, there cannot be any iota of doubt that Malas or Madigas residing in the district of Visakhapatnam were not notified as Hill Tribes for the purpose of the 1917 Act.

13. The original authority as well as the appellate authority, respondents 2 and 1 respectively, have mis-directed themselves in not considering the rules made by the Governor-in-Council u/s 7 of the 1917 Act. They, thereby, committed a grave error apparent on the face of the record and proceeded on the footing that respondents 4 to 7 and their predecessors in title are Hill Tribes. The impugned order, for this reason, cannot be sustained.

14. Insofar as the submission of the learned Counsel for respondents 4 to 7 that they are Valmikis, which is recognized as Scheduled Tribe under the Scheduled Tribes Order, is concerned, this Court is of the considered opinion that having regard to the Scheduled Tribes Order as well as the Scheduled Castes and Scheduled Tribes (Amendment) Order, 1956, ex-facie, Valmikis are recognized as Scheduled Tribes in Andhra Pradesh only with effect from 25.9.1956. The sale deed was executed on 11.5.1956 and was registered on 14.5.1956 and, therefore, even if respondents 4 to 7 claim themselves to belong to Valmiki community, the same has no effect on the sale deed dated 14.5.1956. I may, however, hasten to add that respondents 4 to 7 cannot be permitted to blow hot and cold and approbate and reprobate. They went before the 2nd respondent claiming themselves to be Malas and Hill Tribes and when the matter as remanded, they produced a certificate issued by the Mandal Revenue Officer showing them as Valmikis. Having obtained an order declaring the transaction in favour of the petitioner as void, claiming

themselves to be Malas, a Hill Tribe, respondents 4 to 7 cannot be allowed to turn around and claim themselves to be Valmikis.

15. By Regulation, 1959, transfer of Immovable property by a tribal person to a non-tribal was prohibited. Section 3 of the 1959 Regulations was amended by Regulation 1 of 1970 with effect from 3.2.1970 prohibiting transfer by a tribal to non-tribal of any Immovable property in scheduled areas. A question arises whether Section 3 as amended by Regulations 1 of 1970 operates retrospectively. A Division Bench of this Court took a view that Regulation 1959 and the subsequent Regulation of 1963 (making Regulation 1959 applicable to Telangana area) and Regulation 1 of 1970 are prospective in operation and, therefore, the authorities under these Regulations have no jurisdiction to deal with transactions prior to coming into force of the Regulations. After obtaining leave, the matters were carried to Supreme Court. The Division Bench of the Supreme Court in Venkata Ramanaiah''s case (supra), framed the following question for consideration:

"Whether the provisions of the Andhra Pradesh (Scheduled Areas) Land Transfer Regulation of 1959 (hereinafter referred to as Regulation'') and the subsequent Regulation No. II of 1963 and Regulation No. I of 1970 have retrospective effect and can affect transfers made prior to the coming into force of the said Regulations."

16. After tracing the history of law intended for Scheduled Tribes and Hill Tribes in the Agency tracts, the Supreme Court laid down as under in Venkata Ramanaiah''s case:

"It is obvious that transactions which have taken place years back prior to the very parent Regulation No. 1 of 1959 seeing the light of the day, and which had created vested rights in favour of the transferees could not be adversely affected by the sweep of Section 3(1). It cannot be said to have any implied retrospective effect which would nullify and confiscate pre-existing vested rights in favour of the concerned transferees, transfers in whose favour had become final and binding and were not hit by the then existing provisions of any nullifying statutes. In this connection we may usefully refer to Francis Bennion''s Statutory interpretation, Second Edition at page 214 wherein the learned author, in Section 97, deals with retrospective operation of Acts. The learned author has commented on this aspect as under:

The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air, Clumsy though these images are, they should the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow''s backward adjustment of it. Such, we believe, is the nature of law Dislike of ex post facto law is enshrined in the United State Constitution and in the Constitutions of many American States, which forbid it. The true principle is the lex prosict non respective (law looks forward not back). As Willes J said, retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought when

introduced for the first time to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.

17. In view of the above binding precedent, Regulation 1959 has no application to the transaction in question.

18. In the result, for the above reasons, the impugned order dated 3.7.1994 confirming the order of the 2nd respondent dated 13.5.1996 cannot be sustained. It is accordingly set aside. The Writ Petition is allowed. No order as to costs.