Indupur Sudhir Reddy Vs State of A.P. and Another

Court: Andhra Pradesh High Court

Date of Decision: Sept. 25, 1997

Acts Referred: Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 â€" Section 10(2), 11, 8 Constitution of India, 1950 â€" Article 31A, 31B

Citation: (1998) 2 ALT 89

Hon'ble Judges: Lingaraja Rath, J; B.S.A. Swamy, J

Bench: Division Bench

Advocate: V.V. Prabhakara Rao, for the Appellant; Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Lingaraja Rath, J.
The question strenuously urged in this appeal is the entitlement of a minor son in a coparcenary who has become major

after the notified date of the Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as "the Act") to a separate ceiling

for himself under the Act. Though the question has been answered in the negative by a Bench decision of this Court in C.R.P. No. 1851 and 2042

of 1990, dated 28-8-1997, yet the claim of the petitioner, as submitted by the learned senior Counsel Sri M.V. Ramana Reddy appearing for him,

on the plea of the Act though included in the IX Schedule of the Constitution yet does not have the immunity provided under Article 31-B of the

Constitution of India, and that determination of ceiling without giving an independent ceiling to him amounts to compulsory acquisition of land within

the ceiling area without paying market value compensation and hence for the reason the provision of determination of ceiling is hit by the second

proviso to Article 31-A of the Constitution, was not considered in the earlier judgment. Hence, we decided to hear the matter and come to an

independent conclusion.

2. The scheme of the Act has been well exposed in the previous judgment, but for our purpose here it needs elucidation here that after the

declaration is filed u/s 8 of the Act, the Tribunal decides the existence or otherwise of excess land over the the ceiling entitlement and thereafter

steps are to be taken by the Tribunal by serving notice u/s 10 (2) to direct surrender of the land. On receipt of the notice, the notice (sic. land

holder) has to decide his option by filing a statement as to the lands to be retained by him, which if accepted by the Tribunal, an order shall be

passed accordingly. If the person fails to file the statement or files an incomplete statement, the Tribunal after giving opportunity to the person

concerned itself makes the selection of the lands to be surrendered. In either case, after the order of the Tribunal is passed, the land is deemed to

have been surrendered. Section 11 makes the provision that where any land is surrendered or is deemed to have been surrendered, the Revenue

Divisional Officer is to take possession or authorise any officer to take possession of the surrendered land and that such land shall thereupon vest in

the Government free from all encumbrances. It is on the basis of such scheme of the Act the argument is made that as vesting in the Government

does not take place until possession has been taken, the land continues, before the vesting, in the family of the land holder with their title to it and if

by the time the land is taken possession of, any minor son has become major, he becomes entitled to another ceiling independent of his father by

virtue of having independent title to the land. Either such ceiling is to be released to him with an opportunity, to select his own lands or if the land is

taken possession of, it has to be done only by payment of market value compensation. In developing the submission reliance has been placed on a

Full Bench Judgment in Maddukuri Venkatarao and Others Vs. The State of Andhra Pradesh and Another, wherein the vires of the Act was

considered. In paragraph 155 of the judgment at page 346 the judgment recorded that in view of the pronouncement of the Supreme Court in

Kunjukutty Sahib, etc., etc. Vs. The State of Kerala and Another, the learned Advocate General conceded that the provisions of Section 7 or

Section 10 (5) (ii) read with Explanation to Section 3 (i) of the Act might offend the second proviso to Article 31-A(1) of the Constitution.

However, the vires of the Act was upheld only because of its inclusion in the IX Schedule of the Constitution of India. The argument is further

developed to contend that the Supreme Court decided in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, that the immunity

under Article 31-B of the Constitution to the Acts included in the IX Schedule was available only to the Acts that were included in the Schedule

upto the date of the judgment i.e., 24-4-1973 but that subsequent inclusions did not have such an immunity if they violate the basic structure of the

Constitution. According to Mr. Ramana Reddy since the impugned Act violates the basic structure of the Constitution, its provisions are not

immune from challenge as being violative of second proviso to Article 31-A of the Constitution.

3. The argument though ingenious yet does not survive beyond surface. As was explained in the earlier judgment in the C.R.P., ceiling is

determined only with reference to the notified date. The ceiling in respect of units, either family or otherwise, has to be so fixed, since otherwise,

the entire scheme of land reforms would become an indefinitely futile exercise. Law has visualised a scheme to put a finality to the rights of the

parties in respect of agricultural lands held by them and draws an artificial date bar after which all rights shall stand extinguished and the surplus

lands so collected are to be distributed amongst the landless persons. This scheme of the Act is designed to achieve agrarian reform which itself is

one of the objectives borne out of Directive Principles of State policy. If the submission of the learned Counsel is accepted, it would mean no land

to be finally determined as vested in the State and available for distribution. The mere incidental fact of notice u/s 10 (2) to have been given at a

belated stage, which factor occasioned a minor son to become a major in the mean time, cannot entitle him to claim a ceiling for himself as that

would be against the canons of the statute itself and would be giving a premium to the inaction either of the Tribunal to give notice or decide or of

the Revenue Divisional Officer to take possession of the land. In such a case, it would be obviously possible for an interested person to manage

delay in issue of notice u/s 10 (2) or of taking possession and then come forward with the case that as the vesting has taken place at a time after his

becoming a major, he is entitled to frustrate the provisions of the Act to his benefit.

4. There is also no substance in the main set of argument of the learned Counsel for the appellant. For applicability of provisions of the second

proviso to Article 31-A of the Constitution the conditions necessary are that apart from the fact that there must be a law for acquisition by the

State of an estate and the land acquired was under personal acquisition of the affected person, that such acquisition must be made of the land

which is within the ceiling limit applicable to him under any law for the time being in force. The ceiling being expressly determined with reference to

the notified date, which is 1-1-1975 in this case, the appellant is included in the family unit of his father when the ceiling is determined or is liable to

be determined. The Act does not visualise any acquisition of land within the ceiling determined on 1-1-1975. That being so, there is no question of

any land being acquired within the ceiling allotted to the minor son. He is, for the purpose of determination of ceiling, included in the family unit of

his father and has a right in that ceiling. As was explained in the earlier judgment, the definition of "family unit" under the Act is an artificial one

evolved by the Legislature only for the purpose of the Land Reforms Act and has nothing to do with the concept of the traditional family either

under the Hindu Law or any other law. It is for such reason not worthwhile to contend that any land is being acquired by the State in the process of

its taking possession of determined surplus land. The application of the second proviso of Article 31-A arises only if a ceiling area has been

determined under the ceiling law in respect of the appellant, the acquisition by the State is out of that ceiling area and that such land is under his

personal cultivation. After abolition of Article 31 of the Constitution, there is no constitutional guarantee for payment of either market value

compensation or just compensation to any acquired land. The right to get compensation is determined as is regulated either under the Land

Acquisition Act or under the respective acts providing for acquisition, and instead of protection of Part-Ill of the Constitution, the acquisition

process has now only the protection of Article 300-A. That is why it is permissible now to fix compensation for acquired land at a lesser value than

the market value compensation which is the feature found in all agrarian reform Acts.

5. The submission on the basis of Keshavananda''s case is also misconceived. In the very case the Apex Court ruled that the right to property is

not a basic feature of the Constitution. Further, after 44th amendment of the Constitution, right to property is no longer a fundamental right. Hence,

the immunity to the present Act provided under the IX Schedule is not lost only because ceiling is determined with reference to the land holder on

the notified date.

6. Mr. Kamana Reddy placed reliance on a decision of the Supreme Court in Ujjagar Singh v. Collector (1995) 6 SCC 410 to stress the point

that unless possession has been taken, the land does not vest in the Government. The decision has no application. In the cited case, the land was

acquired under the Pepsu Tenancy Agricultural Lands Act, 1955. Though surplus land had been declared yet it had not been taken over by the

State Government and had remained in the possession of the appellant. Subsequently, fresh steps were again taken for determination of the surplus

land under Punjab Land Reforms Act, 1972. The appellant filed objections saying that on the relevant date he had four adult sons and as such he

had no surplus land. While the proceedings were pending a notice directing to surrender the surplus land as determined under the Pepsu Act was

served. On the matter being challenged, the Supreme Court held that the land had never vested in the State Government under the earlier Act and

consequently the title of the land owner has not been extinguished and that for such reason fresh steps for fixation of the ceiling has to be taken

under the new Act. So far as the present Act is concerned, it prohibits, u/s 17, alienation of any land after the notified date or of partition thereof or

creation of a trust in respect thereof if the land is in excess of the ceiling area as on 24th January, 1971. The prohibition is to continue until the

ceiling is determined and an order has been passed by the Revenue Divisional Officer u/s 11 of the Act taking possession of the excess land.

Section 7 is the corresponding Section relating to transactions effected in between 24-1-1971 and the notified date providing such transactions to

be disregarded unless transferor is able to prove that the transfer or creation of the trust had not been effected in anticipation of and with a view to

avoid or defeat the objects of any law relating to reduction in the ceiling area of agricultural holdings. The Section further provides that any

alienations by way of sale, lease and mortgage or trust created or even if any of transactions is effected in execution of a decree or order of a Civil

Court or any award or order of any other authority on or after the 2nd May, 1972 and before the notified date in contravention of the provisions of

the Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act, 1972 shall be null and void.

7. The Section also provides that if any person has converted any agricultural land to non-agricultural land within five years before the notified date,

such lands are deemed to be agricultural lands on the date of notified date for the purposes of the Act. Thus the Scheme of the Act is to achieve a

stalemate regarding all transactions with respect to land like alienation, partition, creation of trust or otherwise, till the excess area has been

determined and land has been taken possession of. This indicates the intention of the Legislature that the land is held by the landholder, after the

ceiling has been determined, so to say, on trust for the State, without any right in anybody to create a title in the surplus land.

8. In view of such circumstances, we do not find any merit in the appeal and dismiss it accordingly. But in the circumstances there shall be no order

as to costs.