

(1997) 03 AP CK 0012

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 3137 of 1996

T. Bangaru Raju and Others

APPELLANT

Vs

Authorised Officer-cum-RDO,
Land Reforms Tribunal and
Others

RESPONDENT

Date of Decision: March 11, 1997

Acts Referred:

- Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 - Section 10(3), 10(5), 11, 17, 19

Citation: (1997) 3 ALT 398 : (1997) 2 APLJ 284

Hon'ble Judges: C.V.N. Sastri, J

Bench: Single Bench

Advocate: P. Sitarama Raju, for the Appellant; D. Rama Linga Swamy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.V.N. Sastri, J.

This revision filed u/s 21 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short "the Act") is directed against the order of the Land Reforms Appellate Tribunal setting aside the order of the Primary Tribunal and over-ruling the objections raised by the petitioners with regard to the acceptance of the surrender of certain lands made by respondents 2 and 3 under the provisions of the Act. Respondents 2 and 3, who are the declarants in L.C.C. Nos. 1269, 1275, 1276 of 1275 were found to be holding excess land under the Act. Pursuant to the orders passed by the Land Reforms Tribunal and the Land Reforms Appellate Tribunal finally determining the surplus land held by them, the declarants i.e., respondents 2 and 3 proposed to surrender a total extent of Acs. 105.56 cents of land comprised in the three villages. The said lands proposed to be surrendered by

the declarants were duly inspected by the Revenue Divisional Officer on 10-11-1992 and after such inspection the Revenue Divisional Officer recommended that a total extent of Acs. 97.91 cents out of the lands proposed to be surrendered are suitable for taking possession. Form VIII was accordingly published in the concerned villages by beat of torn tom as well as in the Notice Board of the M.R.O's. office, Cheepurupalli on 12-1-1993 calling for objections, if any, from interested parties. Since no objections have been received within the stipulated time of 15 days, orders u/s 10(3) of the Act have been issued on 29-1-1993 approving the surrender of the said lands and Form IX was also issued on the same day authorising the Mandal Revenue Officer, Cheepurupalli, to take possession of the above lands. Thereafter on 1-2-1993, the petitioners herein, who are third parties, put in an objection petition before the Land Reforms Tribunal claiming that they have purchased extents totalling Acs. 15.59 cents out of the surrendered lands in the year 1988 under registered sale deeds from one Chelikani Sitaramaiah Swamy and objected to the acceptance of the surrender of the said extent of Acs. 15.59 cents by the declarants i.e., respondents 2 and 3 herein. The petitioners further contended that the lands purchased by them were in their absolute possession and enjoyment and as such they could not have been surrendered by the declarants who were never in actual possession and enjoyment of the same. The Primary Tribunal, by its order dated 16-3-1994, held that the lands in question i.e., the extent of Acs. 15.59 cents are under the absolute possession and enjoyment of the petitioners and as such the same could not be surrendered by the declarants and accordingly the Tribunal directed that the said land should be deleted from the earlier order dated 29-1-1993 passed u/s 10(3) of the Act. The Primary Tribunal also directed the declarants to surrender alternate lands in lieu of the said lands measuring Acs. 15.59 cents within 15 days from the date of the said order failing which action will be taken to select lands suo motu as per rules.

2. Questioning the said order of the Primary Tribunal Respondents 2 and 3 filed L.R.A. No. 2 of 1994. The Appellate Tribunal by its judgment dated 22-7-1996 allowed the said appeal and set aside the order of the Primary Tribunal, holding that the petitioners have no right to object to the surrender of the said lands by respondents 2 and 3 since the said lands were not included in the declaration of the petitioners' vendor. The Appellate Tribunal also held that since the vendor of the petitioners never included these lands in his declaration, the question of any dispute with regard to the title to the said lands did not arise and hence the objection raised by the petitioners for the surrender of the said lands by respondents 2 and 3 herein is unsustainable under law. Hence this revision by the petitioners.

3. Sri P. Sitarama Raju, the learned Counsel appearing for the petitioners tried to assail the order of the Appellate Tribunal by contending that the petitioners have purchased the lands in question from one Chelikani Sitarama Swamy under four registered sale deeds dated 8-2-1988, 9-2-1988, 12-2-1988 and 12-2-1988, that the sales were duly effected by their vendor after his holding was finally determined as

per |the provisions of the Act and after he surrendered the excess land held by him, that the said sale deeds are, therefore, valid and saved by Section 17 of the Act, that the petitioners" vendor in his turn purchased these lands in 1956 from one Sundararamaiah who got a patta for these lands in 1948 from Vizianagaram estate, that respondents 2 and 3 clandestinely included these lands in their holdings and purported to surrender these lands towards the excess land held by them without any manner of right, that the Primary Tribunal was perfectly justified in upholding the objection raised by the petitioners and that the Appellate Tribunal grossly erred in setting aside the order of the Primary Tribunal ignoring the large volume of documentary evidence produced by the petitioners in support of their case. The learned Counsel for the petitioners has drawn my attention to the copies of the following documents which are supplied by him in the material papers filed in this C.R.P., namely, (1) Patta bearing No. 184 granted to the petitioners" vendor" s vendor i.e., P. Sundararamaiah on 6-10-1948, (2) sale deed by Sundararamaiah in favour of the petitioners" vendor i.e., C. Seetharamaiah Swamy on 15-12-1956, (3) patta particulars of Sundararamaiah, (4) proceedings of the Mandal Revenue Officer dated 10-2-1988 wherein the Mandal Revenue Officer held that both parties (the petitioners" vendor and respondents 2 and 3) were unable to establish their title and they are advised to establish their rights before the settlement Court (5) four registered sale deeds obtained by the petitioners from C. Sitaramaiah Swamy in 1988, (6) pattadar pass-books issued in favour of the petitioners, (7) land-ownership title deeds granted by the Government to the petitioners, (8) land revenue receipts evidencing payment of land revenue by the petitioners from 1988 to 1992 and (9) petition filed u/s 145 Cr.P.C. on the file of the Sub-divisional Magistrate-cum-Mandal Revenue Officer, Vizianagaram.

4. According to the learned Counsel for the petitioners, all these documents were produced by the petitioners before the Primary Tribunal. The order of the Primary Tribunal, however does not contain any indication whatsoever that these documents were filed before it and there is no mention about any of these documents in the order of the Primary Tribunal or in the order of the Land Reforms Appellate Tribunal. Similarly even the objection petition filed by the petitioners before the Primary Tribunal does not indicate that any documents were filed along with it in the Primary Tribunal. It is, therefore, difficult to accept the submission of the learned Counsel for the petitioners, that the Appellate Tribunal totally ignored this large volume of documentary evidence produced by the petitioners and its order is thereby vitiated. Even in this C.R.P. no application is filed to receive the said documents by way of additional evidence, assuming that such application is maintainable. I am, therefore, not inclined to take into consideration the said documents relied on by the petitioners for the first time at this stage. It is further contended by the learned counsel for the petitioners that the facts mentioned above unmistakably point to the existence of a dispute regarding the title to these lands and as such the surrender of such lands by respondents 2 and 3 cannot be accepted

in view of Section 10(5)(a)(ii) of the Act. The learned counsel for the petitioners has also submitted that since the Appellate Tribunal failed to advert to or consider any of these documents, it is a fit case for remanding the matter for fresh disposal according to law after considering the said documentary evidence produced by the petitioners.

5. On the other hand, Sri D. Ramalingaswamy, the learned Counsel for respondents 2 and 3, has submitted that the lands in question were duly included by respondents 2 and 3 in the declarations filed by them which were accepted by the tribunals by computing the same in their holdings, that as such the surrender of the said lands by respondents 2 and 3 and acceptance of the same is perfectly valid. He has also contended that on the other hand C. Sitaramaiah Swamy, the petitioners' vendor, played fraud and he did not show these lands in his holding in the declaration filed by him under the Act and thereby he managed to surrender only a very meagre extent of land by way of surplus and that the alleged alienations made by him in favour of the petitioners in the year 1988 are illegal and void as they are hit by the provisions of the Act and as such the petitioners have no right whatsoever to object to the surrender of these lands by respondents 2 and 3 and the objection petition filed by them is not maintainable.

6. The learned Government Pleader for Land Ceilings has fairly submitted that though before the Primary Tribunal the Assistant Government Pleader appearing for the authorised officer supported the case of the petitioners, the same cannot be justified having regard to the provisions of the Act. She further contended that the order of the Appellate Tribunal is in accordance with law and that it does not call for any interference. At the same time, she has also drawn my attention to a recent judgment of a learned Single Judge of this Court reported in Gangi Pothuraju and Others Vs. Sri Merla Surya Prabhakar Rao and Another, wherein it has been held that when there is a doubt as to the title to the lands and the declarants are not in possession of the lands, the surrender of such lands cannot be accepted. The Learned Government Pleader has finally submitted that appropriate orders may be passed in the case keeping in view the provisions of the Act.

7. The declarations filed by respondents 2 and 3 and the verification report of the verifying officer as also the orders passed by the Land Reforms Tribunal and the Appellate Tribunal clearly establish the fact that the lands in question were duly declared by respondents 2 and 3 by including the same in the declarations filed by them, and that the Tribunals have accepted the same by computing the said lands in the holding of respondents 2 and 3. The said orders have become final. The learned Counsel for the petitioners sought to contend that these lands were also included by petitioners' vendor Chelikani Sitaramaiah Swamy in the declaration filed by him, but the Survey Numbers were not correctly mentioned by him in the declaration. It is difficult to accept this submission of the learned Counsel for the petitioners in the face of the verification report filed by the verifying officer according to which the

lands in question are not part of the holding of Chelikani Sitaramaiah Swamy. Neither the declaration filed by Chelikani Sitaramaiah Swamy nor the orders passed by the Tribunals in his case are placed before me. Further it was not disputed before the tribunals below that Chelikani Sitaramaiah Swamy had not included these lands in his declaration. It, therefore, follows that the petitioners" vendor i.e., Chelikani Sitaramaiah Swamy did not show these lands in his declaration. Section 3(i) of the Act defines "holding" as follows:

- "(i) "holding" means the entire land held by a person:-(i) as an owner;
- (ii) as a limited owner;
- (iii) as an usufructuary mortgagee;
- (iv) as a tenant
- (v)

Section 8 enjoins every person whose holding exceeds the specified limits to furnish a declaration in respect of his holding in such form as may be prescribed. According to Section 24 of the Act, any person furnishing a declaration which he knows or has reason to believe to be false, incorrect or incomplete, he shall be punished with imprisonment for a term which may extend to two years or with a fine which may extend to two thousand rupees or with both. It is thus manifest that a declarant is bound to declare all the lands held by him in any of the said capacities and he cannot omit any lands from his declaration. Section 17 (1) of the Act provides that:

"No person whose holding, and no member of family unit, the holding of all the members of which in the aggregate, is in excess of the ceiling area as on the 24th January, 1971 or at any time thereafter, shall on or after the notified date, alienate his holding or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usufructuary mortgage or otherwise, or effect a partition thereof, or create a trust or convert an agricultural land into non-agricultural land, until he or the family unit, as the case may be, has furnished a declaration u/s 8, and the extent of land, if any, to be surrendered in respect of his holding or that of his family unit has been determined by the Tribunal and an order has been passed by the Revenue Divisional Officer under this Act taking possession of the land in excess of the ceiling area and a notification is published u/s 16, and any alienation made or partition effected or trust created in contravention of this section shall be null and void and any conversion so made shall be disregarded."

Section 19 lays down the procedure to be followed by the registering officers before whom any document is presented for registration. Sub-section (1) of the said Section provides that every person presenting for registration on or after the notified date any document relating to alienation of any land shall, at the time of such presentation, furnish a declaration, in duplicate by the transferor making the alienation, to the effect that the holding of the transferor does not exceed the

ceiling area. Sub-section (3) of Section 19 provides that on or after the notified date no registering officer shall accept for registration any document relating to the alienation of any land if the document is not accompanied by the declaration mentioned in sub-section (1). Sub-section (4) requires the registering officer to forward one copy of the declaration referred to in this Section to the Revenue Divisional Officer within whose jurisdiction the holding, which is the subject matter of the document or a major part thereof is situate and the Revenue Divisional Officer may obtain such information as may be necessary for verifying as to the correctness of the statements contained in the declaration. Sub-section (6) enables the Tribunal or the Revenue Divisional Officer to conduct an enquiry and determine whether or not the transaction is in contravention of the provisions of this Act. The learned Counsel for the petitioners contends that inasmuch as the registering officer has registered the sale deeds executed in favour of the petitioners by Chelikani Sitaramaiah Swamy , it must be presumed that the procedure under Sections 17 and 19 must have been duly followed. I cannot agree with this submission as it is clearly established from the material available on record that the petitioners" vendor i.e., C. Sitaramaiah Swamy failed to show these lands in his declaration and there is nothing on record to show that the procedure prescribed under Sections 17 and 19 of the Act was followed while making the alienations in favour of the petitioners. Prima facie the sale deeds obtained by the petitioners in the year 1988 are hit by the provisions of the Act. The burden is on the petitioners to prove that the conditions laid down in Sections 17 and 19 of the Act are satisfied. The petitioners failed to prove the same by any reliable evidence.

8. It is next contended by the learned Counsel for the petitioners that since there is a cloud on the title and there is a dispute as to the title to the land in question, the surrender of the said lands cannot be accepted as per Section 10 (5) (a) (ii) which provides that it shall be open to the Tribunal to refuse to accept the surrender of any land, the surrender of which is not acceptable on account of a dispute as to the title to the land or an encumbrance on the land or on account of the land being in possession of any person mentioned in item (v) of clause (i) of Section 3. This provision is only an enabling provision which confers a discretion on the Tribunal either to refuse or to accept the surrender where it feels that there is a dispute as to the title to the land. The Tribunal is not bound to refuse to accept the surrender of the land merely because an objection has been raised by third parties like the petitioners herein with regard to the title to the lands after the entire proceedings were completed and the surrender was approved and accepted. Inasmuch as the vendor of the petitioners did not show these lands in his declaration and as the lands were duly included and computed in the holdings of respondents 2 and 3, I am of the view that the Appellate Tribunal was justified in rejecting the contention of the petitioners. The decision of this Court reported in G. Pothuraju v. M. Surya Prabhakar Rao (1 supra) which was cited by the learned Government Pleader in this context is distinguishable on facts. In that case, the declarant (first respondent)

executed an agreement of sale on 10-3-1972 in favour of one Sathi Raju and put him in possession. The said Sathi Raju in turn sold the said land to the petitioners. It was found that the said land was included in the declarations filed by Sathi Raju as well as the first respondent. When the first respondent proposed to surrender the said land, the petitioners raised objection claiming title to the land. On those facts, the Court held that there was a genuine dispute as to the title to the land and there was a cloud on title and that the first respondent who parted with the land under the agreement of sale dated 10-3-1972 cannot surrender the same land towards his excess holding. In my view, the said judgment has no application to the facts of the instant case. Further as already noticed above, when Form VIII was published in the village by beat of torn tom as well as in the notice-board of the M.R.O's office on 12-1-1993 calling for objections, if any, to the proposed surrender by respondents 2 and 3, no objections have been received within the stipulated time. Hence orders u/s 10(3) have been issued on 29-1-1993 accepting the surrender and Form IX was also issued on the same day authorising the Mandal Revenue Officer, Cheepurupalli to take possession of the lands. When once an order under Subsection (3) of Section 10 is passed and an order authorising any officer to take possession of such land is passed u/s 11, the land shall vest in the Government free from all encumbrances from the date of such order. As the petitioners failed to come forward with any objection within the time provided by law and as the land stood vested in the Government free from all encumbrances from 29-1-1993, it was not subsequently open to the petitioners to come forward with the objection petition. For this reason also, I am of the view that the objection petition filed by the petitioners is not maintainable.

9. For the foregoing reasons, I do not find any merit in the Civil Revision Petition and it is accordingly dismissed. No order as to costs.