

(2001) 07 AP CK 0054

Andhra Pradesh High Court

Case No: Writ Petition No. 59 of 1992

R. Kamaraju and others

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision: July 3, 2001

Acts Referred:

- Andhra Pradesh Water Tax Act, 1988 - Section 11, 12, 3, 6
- Constitution of India, 1950 - Article 226

Citation: (2001) 5 ALD 317 : (2001) 5 ALT 121

Hon'ble Judges: S.R. Nayak, J; S. Ananda Reddy, J

Bench: Division Bench

Advocate: Mrs. M. Vinobha Devi, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.R. Nayak, J.

The petitioners, eight in number, are the agriculturists of A. Mallavaram village, Gollaprolu Mandal, East Godavari District. The petitioners own lands in Mallavaram and Ramanakkapet and other villages. According to the petitioners, the lands owned by them are rainfed lands and they are not irrigated by the public irrigation sources. Nevertheless, the petitioners complain that without issuing any notification, as contemplated u/s 4 of the A.P. Water Tax Act, 1988 (hereinafter referred to "the Act"), which is a condition precedent to fix liability of tax on the agriculturists, coercive steps have been taken forcefully to recover the tax. So alleging the petitioners have prayed for the following relief:

"For the reasons stated in the accompanying affidavit, the petitioners herein pray that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, preferably one in the nature of writ of mandamus, declaring the action of

the respondents in taking coercive steps for the collection of the land revenue as per the additional assessment is contrary to Sections 3 to 6 of Act 11 of 1988 and also held by this Hon"ble Court in its judgment dated 3-4-1988 in AS No.836 of 1981 confirming the judgment and decree in OS No.80 of 1976, on the file of the Principal Subordinate Judge's Court, Kakinada, dated 31-12-1980, and pass such other or further orders as are deemed fit and proper in the interest of justice."

2. In opposition, the respondents have filed counter-affidavit opposing the writ prayer. It is stated in the counter-affidavit that the land owned by the petitioners is being irrigated by Yeleru river water through R.R.B. Tank. The petitioners have also lands under the said tank. Contesting the allegation of the petitioners that there is no notification u/s 4 of the Act, it is submitted in para 7 of the counter that the District Collector approved the notification in Reference No. D5/8537/90, dated 9-6-1990 and the same was published in the District Gazette on 30-6-1990. It is further contended that in response to the notification, the petitioners did not file any objection for the inclusion of their lands under the Government source of irrigation within 30 days of the publication of such notification. It is further stated that in pursuance of the notification issued by the District Collector in the District Gazette, the Mandal Revenue Officer, u/s 5, prepared the list including the names of the petitioners herein and the same was published in the office of the Gram Panchayat.

3. In our considered opinion, this writ petition is not at all maintainable. We say this because the assessment done by the Mandal Revenue Officer u/s 5 of the Act in pursuance of the notification issued by the District Collector u/s 4 of the Act still stands. The petitioners without assailing the validity of the assessment cannot be permitted to question the validity of the consequential proceedings, namely, recovery proceedings. If the respondent authorities are under an obligation to recover the public dues, due to the State, by virtue of a statutory order, no writ of mandamus will go to such authority, not to recover the outstanding dues. However, the learned Counsel for the petitioner would contend that before the enactment of the present Act in 1988, some of the Ayakatdars (not the petitioners) had instituted a suit in OS No. 80 of 1976 in the Court of the Principal Subordinate Judges, Kakinada for declaration that their lands are rainfed lands and therefore no tax could be levied under the repelled Act. It is also stated that the civil Court had decreed the said suit. We are at a loss to understand how that decree passed in a suit filed by others is helpful to the petitioners in the present case. The question "whether a particular land is rainfed land or not?" is purely a question of fact and there is no element of law. Even assuming that the lands of some others were held to be rainfed lands, from that finding it cannot be concluded that the petitioners' lands are also rainfed lands.

4. Be that as it may, we do not think it necessary to dilate on this aspect any further because there is a bar on the civil Court's jurisdiction to entertain a suit. Section 11

of the present Act provides that the rates of water tax levied in accordance with the provisions of the Act, shall not be questioned in any Court of law. It is not the case of the petitioners that they have approached the civil Court on earlier occasion or after the enactment of this Act. There are no civil Court decrees in their favour. Even assuming that there are certain decrees, those decrees cannot be taken into account while determining the tax liability of the petitioners in the present case, in the light of the bar contained in Section 11 of the Act. It is also relevant to note the provisions of Section 12. Section 12 reads:

"12. Act to override other laws :--The provisions of this Act, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, custom or usage having the force of law, or contract or judgment, decree or order of a Court or other authority."

5. The provisions of the present Act and the determination made therein have the over-riding effect. Looking from that angle also, the determination made by the Mandal Revenue Officer, unless it is set at naught by the mode known to the law, would have the overriding effect over the civil Court decrees.

6. In the result, the writ petition is dismissed with no order as to costs.