Thumati Venkaiah and Others

Vs

State of Andhra Pradesh and Others

And

Mutayala Pedda Satyanarayan and Others

Vs

State of Andhra Pradesh

Civil Appeals Nos. 14-32, 902, 879, 1130-32, 1121, 1126, 1172, 1215, 1261, 1127, 1128, 1222, 1224, 1223, 1275, 1129, 1523, 1339, 1280, 863, 1361, 1323, 1373, 1621, 1374, 1410, 1628, 2117, 1961, 1917, 1918, 1919, 1920 & 2290 of 1978 and 3447 & 3450 of 1979 and Writ Petitions Nos. 3973, 3998, 3836, 4198, 4199, 4200, 4210, 4263, 4317, 4318, 4414, 4256, 4537 and 4500 of 1978

(CJI Y. V. Chanderachud, P. N. Bhagwati, V. R. Krishna, Iyer, V. D. Tulzapurkar, A. P. Sen, JJ)

09.05.1980

JUDGMENT

BHAGWATI, J. –

1. These appeals by special leave and writ petitions represent a last but desperate attempt by the class of landholders in Andhra Pradesh to defeat an agrarian reform legislation enacted by the State for the benefit of the weaker sections of the community. It is indeed a matter of regret that a statute intended to strike at concentration of land in the hands of a few and to act as a great equaliser by reducing inequality in holding of land between the haves and the have-nots should have practically remained unimplemented for a period of over seven years. Unfortunately, this is the common fate of much of our social welfare legislation. We can boast of some of the finest legislative measures calculated to ameliorate the socio-economic conditions of the poor and the deprived and to reach social and economic justice to them, but regrettably, a large part of such legislation has remained merely on paper and the benefits of such legislation have not reached the common man to any appreciable extent. The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act 1 of 1973 (hereinafter referred to as the 'Andhra Pradesh Act') which is challenged in the present appeals was enacted by the Andhra Pradesh Legislature on January 1, 1973. Soon after its enactment, the constitutional validity of the Andhra Pradesh Act was challenged before the Andhra Pradesh High Court on various grounds, but a Full Bench of the High court negatived the challenge and held the Andhra Pradesh Act to be constitutionally valid. Though this judgment was delivered by the High Court as early as April 11, 1973, on effective steps for implementation of the Andhra Pradesh Act could be taken, since the Andhra Pradesh Act merely remained on the statute book and for some inexplicable reason, it was not brought into force until January, 1, 1975. Even after the Andhra Pradesh Act was brought into force, not much enthusiasm was shown by the government in implementing its provisions and in the meanwhile, it was found necessary to amend the legislation and hence the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Amendment Act,

1977 was enacted with retrospective effect from January 1, 1975 and by this amending Act certain amendments were made which included inter alia the introduction of Section 4-A. We shall presently refer to the relevant provisions of the amended Andhra Pradesh Act, but before we do so, it is necessary to point out that as soon as the amending Act was passed, another round of litigation was started by the landholders by filing writ petitions in the High Court challenging once again the constitutional validity of the Andhra Pradesh Act. There were several grounds on which the constitutional validity was challenged but the main ground was that by reason of the enactment of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the 'Central Act'), the Andhra Pradesh Act had become void and inoperative. Certain other questions involving the interpretation of the provisions of the Andhra Pradesh Act were also raised in some of the writ petitions, but they too need not be mentioned here, because in the course of the hearing we made it clear to the parties that we would examine only the constitutional validity of the Andhra Pradesh Act and other questions could be agitated by the landholders in the appeals filed by them against the orders determining surplus land. It was pointed out to us that some of the landholders had not filed appeals within the prescribed time and grave injustice would therefore result to them if these questions were not decided by us. But the learned Additional Solicitor-General appearing on behalf of the State fairly stated before us that if appeals have been filed beyond time or are filed within a month of disposal of these appeals and write petitions, the delay in filing the appeals would be condoned. Turning to the constitutional challenge, which in those days was required to be decided by a Full Bench of 5 Judges of the High Court, it was held that the enactment of the Central Act did not have the effect of invalidating the whole of the Andhra Pradesh Act, but since the provisions of the Andhra Pradesh Act were repugnant to the provisions of the Central Act so far as concerned land satisfying both the definition of 'land' in the Andhra Pradesh Act and the definition of 'vacant land' in the Central Act, the Andhra Pradesh Act was held not applicable to 'vacant land' in the Central Act, the Andhra Pradesh Act was held not applicable to 'vacant land' falling within the ambit of the Central Act. The High Court accordingly granted a declaration to this effect to the landholders, but save for this limited relief, dismissed the writ petitions in all other respects, since in the opinion of the High Court there was no substance in any of the other contentions raised on behalf of the landholders. The landholders thereupon preferred the present appeals after obtaining special leave from this Court. Writ petitions were also filed directly in this Court by some of the landholders.

2. The principal contention urged on behalf of the landholders in support of the appeals and writ petitions was that the Andhra Pradesh Act was ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature. This contention was based on two resolutions, one dated April 7, 1972 passed by the Andhra Pradesh Legislative Council and the other dated April 8, 1972 passed by the Andhra Pradesh Legislative Assembly under clause (1) of Article 252 of the Constitution. This Article carves out an exception derogating from the normal distribution of legislative powers between the Union and the States under Article 246 and is in the following terms :

> 252. (1) If it appears to the legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the

Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the legislature of that State.

The effect of passing of resolutions by the Houses of Legislature of two or more States under this constitutional provision is that Parliament which has otherwise no power to legislate with respect to a matter, except as provided in Articles 249 and 250, becomes entitled to legislate with respect to such matter and the State legislatures passing the resolutions cease to have power to make law relating to that matter. The resolutions operate as abdication or surrender of the powers of the State legislatures with respect to the matter which is the subject of the resolutions and such matter is placed entirely in the hands of Parliament and Parliament alone can then legislate with respect to it. It is as if such matter is lifted out of List II and placed in List I of the Seventh Schedule to the Constitution. This would seem to be quite clear on a plain natural construction of the language of clauses (1) and (2) of Article 252 and no authority is necessary in support of it, but if any was wanted, it may be found in the decision of a Full Bench of five Judges of this Court in Union of India v. Valluri Basavaiah chowdhary ((1979) 3 SCR 802 : (1979) 3 SCC 324 : AIR 1979 SC 1415) - in fact the same Bench as the present one - where an identical view has been taken. It was in pursuance of clause (1) of this Article that a resolution was passed by the Andhra Pradesh Legislative Council on April 7, 1972 to the effect that "the imposition of a ceiling on urban immovable property and acquisition of such property in excess of the ceiling and all matters connected therewith or ancillary an incidental thereto should be regulated in the State of Andhra Pradesh by Parliament by law" and an identical resolution in the same terms was passed on the next day by the Andhra Pradesh Legislative Assembly. Similar resolutions were also passed by the Houses of Legislature of some other States, though there is no material to show as to when they were passed. It was however common ground that at best some of these resolutions were passed prior to the enactment of the Andhra Pradesh Act. The result was that at the date when the Andhra Pradesh Act was enacted, Parliament alone was competent to legislate with respect to ceiling on urban immovable property and acquisition of such property in excess of the ceiling and all connected, ancillary or incidental matters, and the Andhra Pradesh Legislature stood denuded of its power to legislate on that subject.

3. Now the Andhra Pradesh Act, as its long title shows, was enacted to consolidate and amend the law relating to the fixation of ceiling on agricultural holdings and taking over of surplus land and mattes connected therewith. On its plain terms, it applies to land situate in any part of Andhra Pradesh. Section 3 (f) creates an artificial unit called 'family unit' by defining it as follows :

3. (f) "family unit" means -

(i) in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and their unmarried minor daughters, if any;

(ii) in the case of an individual who has no spouse such individual and his or her minor sons and unmarried minor daughters;

(iii) in the case of an individual who is a divorced husband and who has not remarried, such individual and his minor sons and unmarried minor daughters, whether in his custody or not; and

(iv) where an individual and his or her spouse are both dead, their minor sons and unmarried minor daughters.

Explanation. - Where a minor son is married, his wife and their off spring, if any, shall also be deemed to be members of the family unit of which the minor son is a member;

The term "land" is defined in Section 3(j) to mean "land which is used or is capable of being used for purposes of agriculture, or for purposes ancillary thereto, including horticulture, forest land, pasture land, waste land, plantation and tope; and includes land deemed to be agricultural land under this Act". Explanation I to this definition enacts a rebuttable presumption that land held under ryotwari settlement shall, unless the contrary is proved, be deemed to be 'land' under Andhra Pradesh Act. Section 3(o) defines 'person' as including inter alia an individual and a family unit. Section 10 is the key section which imposes ceiling on the holding of land by providing that if the extent of the holding of a person is in excess of the ceiling area, the person shall be liable to surrender the land held in excess. If therefore an individual or a family unit holds lands in excess of the ceiling area, the excess would have to be surrendered to the State Government. But the question then arises, what is the ceiling area above which a person cannot hold land. The answer is provided by Section 4 which reads as follows :

4. (1) The ceiling area in the case of a family unit consisting of not more than five members shall be an extent of land equal to one standard holding.

(2) The ceiling area in the case of family unit consisting of more than five members shall be an extent of land equal to one standard holding plus an additional extent of one-fifth of one standard holding for every such member in excess of five, so however that the ceiling area shall not exceed two standard holdings.

(3) The ceiling area in the case of every individual who is not a member of a family unit, and in the case of any other person shall be an extent of land equal to one standard holding.

Explanation. - In the case of a family unit, the ceiling area shall be applied to the aggregate of the lands held by all the members of the family unit.

It will thus be seen that the ceiling area in the case of an individual who is not a member of a family unit is equivalent to one standard holding and so also in the case of a family unit with not more than five members, the ceiling area is the same, but if the family unit consists of more than five members, the ceiling area would stand increased by one-fifth of one standard holding for every additional member of the family unit, subject however to the maximum limit of 2 standard holdings. When the ceiling area is applied to the holding of a family unit, the Explanation requires that the lands held by all the members of the family unit shall be aggregated for the purpose of computing the holding of the family unit. Where, therefore, there is a family unit consisting of father, mother and three minor sons or daughters, the lands held by all these persons would have to be clubbed together and then the ceiling area applied to the aggregate holding. There is no distinction made in the definition of 'family unit' between a divided minor son and an undivided minor son. Both stand on the same footing and a divided minor son is as much a member of the family unit as an undivided minor son, and consequently the lands held by a divided minor son would have to be included in the holding of the family unit for the purpose of application of the ceiling area. Section 7 invalidates certain transfers of land and provides for inclusion of such lands in the holding of an

individual or a family unit. Then there is a provision in Section 8 for furnishing a declaration in respect of his holding by every person whose land exceeds the ceiling area and the tribunal is required by Section 9 to hold an enquiry and pass an order determining the land held in excess of the ceiling area. Such land has to be surrendered by the person holding the land and on such surrender, the Revenue Divisional Officer is empowered under Section 11 to take possession of the land which thereupon vests in the State Government free from all encumbrances. Section 14 provides inter alia that the land vested in the State Government shall be allotted for use as house-sites for agricultural labourers, village artisans or other poor persons owning no houses or house-sites or transferred to the weaker sections of the people dependent on agriculture for purposes of agriculture or for purposes ancillary thereto in such manner as may be prescribed by the rules, subject to a proviso that as far as practicable not less than one-half of the total extent of land so allotted or transferred shall be allotted or transferred to the members of the Scheduled Castes and the Scheduled Tribes. Section 15 enacts a provision for payment of compensation for land vested in the State Government at the rates specified in the Second Schedule. These are the only relevant provisions of the Andhra Pradesh Act which need to be referred to for the purpose of the present appeals.

4. We may now turn to examine the relevant provisions of the Central Act. This Act enacted by Parliament pursuant to the authority conferred upon it by the resolutions passed by the Houses of Legislature of several States including the State of Andhra Pradesh under clause (1) of Article 252. It received the assent of the President on February 17, 1976 and as its long title and recital show, it was enacted to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good. We shall refer to a few material provisions of this Act. Section 2(a)(i) defines "appointed day" to mean in relation to any State to which this act applies in the first instance - which includes the State of Andhra Pradesh - the date of introduction of the Urban Land (Ceiling and Regulation) Bill, 1976 in Parliament. This was the Bill which culminated in the Act and it was introduced in Parliament on January 28, 1976. Consequently, this date would be the 'appointed day' for the purpose of applicability of the Act to the State of Andhra Pradesh. The definition of "family" in Section 2(f) is materially in the same terms as the definition of "family unit" in the Andhra Pradesh Act. Then follow some important definitions which need to be set out in extenso. The word "person" is defined in Section 2(i) as including inter alia an 'individual' and a 'family'. Section 2(n) defines "urban agglomeration" in the following terms :

> 2. (n) (A) in relation to any State or Union territory specified in column (1) of Schedule 1, means, -
>
> (i) the urban agglomeration specified in the corresponding entry in column (2) thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof; and
>
> (ii) any other area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to

category D in that Schedule and the peripheral area therefor shall be one kilometre;

#(B) * * * * *##

The term 'urban land' is defined in Section 2(o) to mean :

(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat,

but does not include any such land which is mainly used for the purpose of agriculture.

Explanation. - For the purpose of this clause and clause (q), -

(A) "agriculture" includes horticulture, but does not include -

(i) raising of grass,

(ii) dairy farming,

(iii) poultry farming,

(iv) breading of livestock, and

(v) such cultivation, or the growing of such plant, as may be prescribed.

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture;

* * * * *##

(C) notwithstanding anything contained in clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;

Section 2(q) gives a definition of "vacant land" by providing that "vacant land" means, subject to certain exceptions which are not material, land, not being land mainly used for the purpose of agriculture, in an urban agglomeration. Section 3 is the pivotal section which imposes ceiling on holding of 'vacant land ' by providing that :

Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit, in the territories to which this Act applies under sub-section (2) of Section 1.

Section 4 divides urban agglomeration into categories A, B, C and D and lays down different ceiling

limits for these different categories. Then there is a provision in Section 5 invalidating, in, certain circumstances transfer of vacant land made at any time during the period commencing on the appointed day and ending with the commencement of the Act. The procedure for determining "vacant land" held in excess of the ceiling limit is laid down in Sections 6 to 9 and Section 10 enacts a provision for acquisition of such land acquired under the Act and it empowers the State Government to allot such vacant land to "any person for any purpose relating to, or in connection with, any industry or for providing residential accommodation of such type as may be approved by the State Government to the employees of any industry". It will thus be seen that the Central Act imposes a ceiling on holding of land in urban agglomeration other than land which is mainly used for the purpose of agriculture and agriculture in this connection includes horiculture, but does not include raising or grass, dairy farming, poultry farming, breeding livestock and such cultivation or the growing of such plants as may be prescribed by the rules, and, moreover, in order to fall within the exclusion, the land must be entered in the revenue or land record before the appointed day as for the purpose of agriculture and must also not have been specified in the master plan for a purpose other than agriculture.

5. Now, as we have already pointed out above, the Andhra Pradesh Legislature had, at the time when the Andhra Pradesh Act was enacted, no power to legislate with respect to ceiling on urban immovable property. That power stood transferred to Parliament and as a first step towards the eventual imposition of ceiling on immovable property of every other description, Parliament enacted the Central Act with a view to imposing ceiling on vacant land, other than land mainly used for the purpose of agriculture, in an urban agglomeration. The argument of the landholders was that the Andhra Pradesh Act sought to impose ceiling on land in the whole of Andhra Pradesh including land situate in urban agglomeration and since the concept of urban agglomeration defined in Section 2(n) of the Central Act was an expansive concept and any area with an existing or future population of more than one lakh could be notified to be an urban agglomeration, the whole of the Andhra Pradesh Act was ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature. This argument, plausible though it may seem, is in our opinion, unsustainable. It is not doubt true that if the Andhra Pradesh Act seeks to impose ceiling on land falling within an urban agglomeration, it would be outside the area of its legislative competence, since it cannot provide for imposition of ceiling on urban immovable property. But the only urban agglomerations in the State of Andhra Pradesh recognised in the Central Act were those referred to in Section 2(n)(A)(i) and there can be no doubt that, so far as these urban agglomerations are concerned, it was not within the legislative competence of the Andhra Pradesh Legislature to provide for imposition of ceiling on land situate within these urban agglomerations. It is, however, difficult to see how the Andhra Pradesh Act could be said to be outside the legislative competence of the Andhra Pradesh Legislature insofar as land situate in the other areas of the State of Andhra Pradesh in concerned. We agree that any other area in the State of Andhra Pradesh with a population of more than one lakh could be notified as an urban agglomeration under Section 2(n)(A)(ii) of the Central Act, but until it is so notified it would not be urban agglomeration and the Andhra Pradesh Legislature would have legislative competence to provide for imposition of ceiling on land situate within such area. No sooner such area is notified to be an urban agglomerations, the Central Act would apply in relation to land situate within such area, but until that happens, the Andhra Pradesh Act would continue to be applicable to determine the ceiling on holding of land in such area. It may be noted that the Andhra Pradesh Act came into force on January 1, 1975 and it was with reference to this date that the surplus holding of land in excess of the ceiling area was required to be determined and if there was any surplus, it was to be surrendered to the State Government. It is therefore clear that in an area other than that comprised in the urban agglomerations referred to in Section 2(n)(A)(i), land

held by a person in excess of the ceiling area would be liable to be determined as on January 1, 1975 under the Andhra Pradesh Act and only land within the ceiling area would be allowed to remain with him. It is only is respect of land remaining with a person, whether an individual or a family unit, after the operation of the Andhra Pradesh Act, that the Central Act would apply, if and when the area in question in notified to be an urban agglomeration under Section 2(n)(A)(ii) of the Central Act. We fail to see how it can at all be contended that merely because an area may possibly in the future be notified as an urban agglomeration under Section 2(n)(A)(ii) of the Central Act, the Andhra Pradesh Legislature would cease to have competence to legislate with respect to ceiling on land situate in such area, even though it was not an urban agglomeration at the date of enactment of the Andhra Pradesh Act. Undoubtedly, when an area is notified as an urban agglomeration under Section 2(n)(A)(ii), the Central Act would apply to land situate in such area and the Andhra Pradesh Act would cease to have application, but by that time the Andhra Pradesh Act would have already operated to determine the ceiling on holding of land falling within the definition in Section 3(j) and situate within such area. It is therefore not possible to uphold the contention of the landholders that the Andhra Pradesh Act is ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature.

6. The next contention urged on behalf of the landholders was that on a proper construction of the relevant provisions of the Andhra Pradesh Act, a divided minor son was not liable to be included in "family unit"as defined in Section 3(f) of that Act. The argument was that sub-section (2) of Section 7 did not invalidate all partitions of joint family property but struck only against partitions effected on or after May 2, 1972 and thus, by necessary implication, recognised the validity of partitions effected prior to that date. If therefore a partition was effected prior to may 2, 1972 and under that partition a minor son became divided from his father and mother, the divided minor son could not be included in the 'family unit' and his property could not be clubbed with that of his father and mother because otherwise it would amount to invalidating the partition, notwithstanding that Section 7, sub-section (2), clearly recognised such partition to be valid. This argument is clearly fallacious in that it falls to give due effect to the definition of 'family unit' in Section 3(f) and the provisions of Section 4. It in undoubtedly true that a partition effected prior to May 2, 1972 is not invalidated by the Andhra Pradesh Act and therefore any property which comes to the share of a divided minor son would in law belong to him and would not be liable to be regarded as part of joint family property. But, under the definition of 'family unit' in Section 3(f) the divided minor son would clearly be included in the 'family unit' and by reason of Section 4, his land, whether self-acquired or obtained on partition, would be liable to be clubbed with the lands held by the other members of the 'family unit'. The land obtained by the divided minor son on partition would be liable to be aggregated with the lands of other members of the family unit not because the partition is invalid but because the land held by him, howsoever acquired, is liable to be clubbed with the lands of other members for the purpose of applying the ceiling area to the 'family unit'. We do not therefore see how a divided minor son can be excluded from the 'family unit'. That would be flying in the face of Sections 3(f) and 4 of the Andhra Pradesh Act.

7. Then, a contention was advanced on behalf of the landholders that the definition of 'family unit' was violative of Article 14 of Constitution inasmuch as it made an unjust discrimination between a minor son and a major son by including a minor son in the 'family unit' while excluding a major son and treating him as a separate unit. This contention has already been dealt with by one of us (Tulzapurkar, J.) in the judgment delivered by him today in the Haryana land ceiling matters (Ed. : Seth Nand Lal v. State of Haryana, CA No. 1361 of 1977 etc. decided on May 9, 1980 See (1980) 4 SCC infra.) and we need not repeat what has already been stated there while repelling this contention. Moreover, this contention is no longer open to the landholders since the Andhra Pradesh

Act is admittedly an agrarian reform legislation and it is protected against challenge on the ground of infraction of Articles 14, 19 and 31 by the protective umbrella of Article 31-A, the constitutional validity of which has been upheld by us in the Maharashtra land ceiling cases.

8. We do not therefore see any substance in the contentions urged on behalf of the landholders and we accordingly dismiss the appeals and the writ petitions with costs which are fixed at a lump sum figure of Rs. 5000 in one set to be shared by all the landholders.

</html