Abhinavodhanda Vidya Sankara - Bharati Swamulavaru

Vs

Poonapati Ramayogi Reddi and Others

Civil Appeal No. 280 (N) of 1971

(R.B. Misra, G. L. Oza JJ)

23.04.1986

JUDGMENT

R.B. MISRA, J. –

1. The present appeal by special leave is directed against the judgment and order of the High Court of Andhra Pradesh dated November 27, 1969. By this judgment a Division Bench of the High Court set aside the order of the learned Single Judge, dismissing the petition under Article 226 of the Constitution, and quashed the order of the Estates Abolition Tribunal (District Judge) and remanded the case to the Tribunal for fresh decision according to law on the basis of the materials already on record in the following circumstances.

2. A suo motu inquiry under Section 9(1) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act was initiated by the Assistant Settlement Officer in 1958 for determining whether Lingamguntala Agraharam is an inam estate within the meaning of Section 3(2)(d) of the Madras Estates Lands (Third Amendment) Act, 1936. The Assistant Settlement Officer and the Estates Abolition Tribunal held that Lingamguntala Agraharam was not an inam estate. Later the definition of an inam estate was amended in 1957 and after the amendment, an inam estate, as defined by Section 2(7) includes all estates within the meaning of Section 3(2)(d) of the Madras Estates Land Act. The Assistant Settlement Officer therefore again held a suo motu inquiry to determine whether the Lingamguntala Agraharam came within the wider definition of the inam estate introduced in 1957 Amendment.

3. Some of the Ryots of the village alleged that the Lingamguntala Agraharam was an inam estate within the meaning of Section 3(2)(d) of the Act and engaged a counsel who participated in the inquiry on their behalf up to a certain stage but later on failed to appear, with the result that the Assistant Settlement Officer proceeded with the inquiry in the absence of Ryots or their counsel.

4. The Assistant Settlement Officer by his order dated April 6, 1959 came to the conclusion that Lingamguntala Agraharam is not an estate as defined in Section 3(2)(d) and determined the question accordingly.

5. Against the decision of the Assistant Settlement Officer, the State of Andhra Pradesh preferred an appeal before the Estates Abolition Tribunal (Guntur). The Ryots however did not file an appeal. The Tribunal agreeing with the findings reached by the Assistant Settlement Officer dismissed the appeal. The Ryots thereupon filed a writ petition under Article 226 of the Constitution. It was contended on their behalf that they were not aware of the appeal preferred by the Government and no notice was served upon any of them as required under the rules and that the moment they came

to know about the result of the appeal before the Tribunal on October 11, 1963, they obtained certified copies of the order on October 15, 1963 and filed the writ petition on November 26, 1963 invoking the extraordinary jurisdiction of the Court.

6. The learned Single Judge dismissed the writ petition on two grounds : (1) that there has been inordinate delay of 4 1/2 years in filing the petition under Article 226 of the Constitution against the order of the Assistant Settlement Officer; and (2) that the individual notices were not contemplated and, therefore, there was no ground for interference by the Court. The Ryots filed a writ appeal against the judgment of the learned Single Judge and the Division Bench allowed the same, set aside the judgment of the learned Single Judge, quashed the judgment and order of the Tribunal and remanded the case for decision afresh to the Tribunal on the ground that there has been a flagrant violation of the mandatory rule in not serving the notices on the Ryots in the appeal. The appellant has now approached this Court by special leave.

7. Shri A. Subba Rao, learned counsel appearing for the appellant has contended firstly, that the delay has defeated the claim of the respondents, and secondly, it was not at all necessary to send individual notices to the Ryots under the rules. We find considerable force in either of the two contentions. The respondents had engaged a counsel who appeared for them up to a certain stage but later on the counsel absented himself. The Assistant Settlement Officer was justified in proceeding ex parte and deciding the question involved in the inquiry. If the respondents had notice of the inquiry proceedings and had indeed participated in the proceedings up to a certain stage, it was for them either to have got the order of the Assistant Settlement Officer set aside by means of an application for restoration showing sufficient cause or to have gone up in appeal before the Tribunal. The respondents however, neglected to pursue any of the two remedies and after a lapse of 4 1/2 years they sought to challenge the order of the Assistant Settlement Officer by filing a writ petition under Article 226 of the Constitution. In the circumstances the learned Single Judge was justified in dismissing the writ petition on the ground of delay.

8. As regards the second contention about the non-compliance of the mandatory rule of serving the respondents with a notice of appeal, it was contended for the appellant that there is no requirement of rule to send individual notice of appeal to the respondents inasmuch as the respondents had only appeared before the Assistant Settlement Officer but did not make an application. This contention was however repelled by the Division Bench. We do not propose to express any concluded opinion on this aspect. There is, however, another reason why the non-service of notice on the respondents would be of no avail. It was open to the respondents to have gone up in appeal themselves but they did not choose to do so and they submitted to the order of the Assistant Settlement Officer and therefore the order became final insofar as they were concerned. In the appeal filed by the State, the Tribunal had only confirmed the order of the Assistant Settlement Officer and the respondents were not worse off by the order of the Tribunal. Non-service of notice on the respondents did not result in any prejudice to the respondents.

9. Shri Ram Kumar, appearing for the Ryots, in reply has contended that the Ryots had no knowledge of the order passed by the Assistant Settlement Officer as they did not receive any information from their counsel and the Ryots could not suffer on account of negligence of their counsel. Besides, the counsel contended, the Division Bench has only remanded the case to the Tribunal for fresh decision according to law after giving notice to the Ryots as contemplated by Rule 9 and this would not in any way prejudice any party and the appellant would have an opportunity to produce documents in support of their stand.

10. We are reluctant to accept the contentions of Shri Ram Kumar for the obvious reason that the Ryots had participated in the proceedings and had engaged a lawyer who conducted the proceedings up to a certain stage on behalf of the Ryots but subsequently on the date fixed in the case, the counsel failed to appear. It, therefore, cannot be said that the Ryots had no knowledge of the proceedings. They could have enquired if their counsel did not inform them. In any case, they could have filed an application for setting aside the order of the Assistant Settlement Officer on showing sufficient cause for their non-appearance. But that too was not done by the Ryots. After a lapse of about 4 1/2 years they chose to file a writ petition in the High Court on the technical plea that no notice had been served in the appeal filed by the State. If the Ryots really felt aggrieved by the order of the Assistant Settlement Officer they could have themselves gone up in appeal but they did not do so. As a result of the dismissal of the appeal filed by the State the Ryots were not worse off. The Tribunal had only confirmed the order of the Assistant Settlement Officer. In the circumstances, we are constrained to hold that the Division Bench has committed a manifest error in quashing the order of the Tribunal after a lapse of 4 1/2 years when the Ryots failed to avail of the alternative remedy open to them.

11. Shri Ram Kumar, appearing for the respondents further contended that there has since been change in the Act and the Ryots are entitled to the benefit of the new legislation. If there is any new legislation giving benefits to the Ryots they may seek their remedy open to them in law if so advised.

12. In the result the appeal must succeed. It is accordingly allowed and the judgment of the Division Bench dated November 27, 1969 is set aside but in the circumstances of the case, the parties shall bear their own costs.

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