G. Brahmayya and Others

Vs

Ala Venkaterao and Others

Civil Appeal Nos. 1252-1253 of 1986

(L. M. Sharma, Dr. T. K. Thommen JJ)

06.03.1990

JUDGMENT

SHARMA, J. -

1. Both these appeals have been filed by persons in whose favour the State Government made allotment of agricultural lands on the assumption that they were surplus lands within the meaning of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, hereinafter referred to as 'the Act'. The respondents claim that they have been in possession of the lands as tenants for a long period, and the original land owners had no right to surrender the lands under the provisions of the Act. They assert that they had no information of the steps taken by the aforesaid alleged land owners and the orders passed thereon, and that they (tenant-respondents) continued in possession throughout. The lands, therefore, could not have been treated as surplus and the State Government had no authority to settle the same with the allottee-appellants.

2. The allottee-appellants have denied the claim of the respondents and have pleaded that after the Act came into operation, the land owners made a declaration under Section 8 of the Act in April 1975 on the basis of which excess area was determined under Section 9 of the Act on November 27, 1975, following which the disputed area was surrendered by the land owners in February 1976. The common case of the allottee-appellants and the State Government is that possession was taken by the government in April 1976 and settlements in favour of a large number of allottee-appellants were made on August 15, 1976 in pursuance of which pattas were granted. However, the allottee-appellants were actually put in possession of the different plots later, on April 22, 1977. In 1979 the contesting respondents, claiming tenancy rights attempted trespass, which led to the drawing of a proceeding under Section 145 of the Code of Criminal Procedure. By the order dated October 12, 1979 the Magistrate declared the possession of the allottee-appellants.

3. The tenant-respondents filed appeals under Section 20 of the Act before the Land Reforms Appellate Tribunal against the order dated November 27, 1975 and also challenged before the High Court the judgment in the proceedings under Section 145 CrPC. The Appellate Tribunal, constituted under Section 20, accepted the case of the tenant-respondents and allowed the appeals. The allottee-appellants challenged the decision before the High Court under Section 21 of the Act. The High Court dismissed the claim of the allottee-appellants and confirmed the judgment of the Appellate Tribunal. So far the application against the order of the Magistrate in Section 145 CrPC proceedings was concerned, the High Court held that the same did not survive in view of the judgment of the Appellate Tribunal. Thus, in view of the findings of the Appellate Tribunal in favour of the tenant-respondents and the operative part of the judgment of the high Court, full relief was made available to the tenant-respondents. The allottee-appellants have now challenged the decision of the High

Court by the present appeals.

4. The learned counsel for the allottee-appellants as also the advocate for the State Government which supports the appellants, have contended that having regard to the fact that the tenant-respondents belatedly filed appeal under Section 20 of the Act before it, the Appellate Tribunal had no jurisdiction to entertain the appeals. The argument is that a period of 30 days has been fixed for such appeals without any power to the Appellate Tribunal to condone the delay. The tenant-respondents, therefore, had no right to prefer their appeals after several years of the impugned order dated November 27, 1975.

5. Admittedly no notice was issued to the tenant-respondents of the declaration made by the land owners in April 1975 or of the order dated November 27, 1975 determining the excess area under Section 9. According to their case the tenant-respondents had no information of the proceedings until 1979 when a claim was made for the first time on behalf of the appellants. They, therefore, could not have appealed against the said order earlier. Reliance has also been placed on the language of Section 20(3), quoted below, which, for the purposes of filing the appeal, permits a period of 30 days from the communication of the order and not 30 days from the date on which it is pronounced :

> "20.(3) An appeal shall lie against an order passed by the Tribunal or the Revenue Divisional Officer to the Appellate Tribunal within 30 days of the date of communication of the order, and the Appellate Tribunal shall pass such orders on the appeal as it deems fit and such order shall, subject to revision under Section 21, be final."

It is urged that having regard to the findings of the Land Tribunal which have been confirmed by the High Court, the authority concerned was under a duty to serve notice on the tenants and hear them before passing the order under Section 9 on November 27, 1975, and not having done so the order could not bind them.

6. A brief survey of the provisions of the Act and the Rules framed thereunder will be helpful to understand the contentions of the parties. The Rules detail the procedure to be followed by the authorities, and Rule 4 deals with publication of the declaration furnished by the land owner and information obtained otherwise. Rule 4(2) directs a public notice containing the particulars of the land and the person holding such land in respect of declaration or information received to be published in the manner elaborated thereunder, including the necessity of announcement by beat of tomtom. Laying down the detailed procedure to be followed by the Tribunal, Rule 16(7) states.

> "16.(7) Any person, other than a party who satisfies the Revenue Divisional Officer, the District Collector, Tribunal or the Appellate Tribunal that he has substantial interest in the matter, may at any time during the pendency of the proceedings, be permitted to appear and be heard and to adduce evidence and cross-examine witnesses."

The rest of the provisions of Rule 16 also indicate that evidence has to be admitted. The other sub-rules deal with the manner in which notice and summons would be served on the different parties and the authorities; evidence - and in the case of Appellate Tribunal, further evidence - will be admitted; inspection of the land, shall be, if necessary, made; and other steps taken. It was contended on behalf of the tenant-respondents that the right of appeal under Section 20(3) is not confined to the landlord or the State Government and permits anybody who may be interested to

avail of the provisions. Since the impugned order under Section 9 of the Act adversely affected the tenants, they, according to the learned counsel, were entitled to appeal and this position is further clarified by Rule 16. Reliance was also placed on certain decisions showing that a person who is not a formal party to a proceeding may also impugn the order made therein, if it prejudices him. The learned advocates for the allottee-appellants as well as the State Government stated that they did not dispute this proposition and the counsel for the tenant-respondents should proceed on the assumption that they were entitled to appeal. It was pointed out that the ground on which the judgment of the Appellate Tribunal was fit to be quashed was that of limitation as explained earlier.

7. Mr. Subba Rao, the learned counsel for the tenant-respondents, referred to Section 10 of the Andhra Pradesh (Andhra Area) Tenant Act, 1956, which after its amendment in 1974, declared ever leas subsisting at the commencement of the 1974 Amendment Act to be in perpetuity, and contended that in view of this provision the tenant-respondents became permanent tenants in 1974, that is, before the appointed date under the Ceiling Act which is January 1, 1975. They, therefore, are interested persons entitled to be heard. The question is as to whether in view of the provisions of Rule 4, referred to above, the tenant-respondents can maintain a belated appeal before the Appellate Tribunal. The purpose of public notice is to inform and remind all interested persons to come forward with their claims without wasting further time. In this background the circumstances of the present case have to be examined.

8. The Appellate Tribunal, after entertaining the appeal, followed the procedure prescribed under Rule 16 and both parties led their evidence. Since allottee-appellants belong to the weaker section of the society, the State Government fought the battle for them and produced documents and examined witnesses including the authorities under the Act. The Appellate Tribunal after a thorough examination of the evidence and a detailed discussion thereof, accepted the case of the tenant-respondents and rejected that of the government and the allottees. It has, in paragraph 12 of its judgment, indicated cogent reasons requiring the primary Tribunal to issue notice to the tenants which was not done. Reference also has been made to several documents including extracts from Adangals of the Fasli year 1380 (equivalent to 1970, according to the advocates for both sides before us), showing the possession of the tenants, and the statements of the declarants to the same effect. The Appellate Tribunal has proceeded to consider the evidence of the witnesses at considerable length, and has rejected the evidence of the government authorities both on the question of possession and the steps regarding publication etc. under Rule 4. It is thus clear that the tenants have established their long and continuous possession until the drawing of the proceedings under Section 145 CrPC, and the entire drama of treating the lands as the surplus lands of the original landlords was a mere paper transaction. In absence of actual steps, which ought to have been taken under Rule 4, the tenant-respondents could not be assumed to have any constructive notice and admittedly there was no communication of the order of the primary Tribunal to them. It is significant to note that under Section 20(3) the period of 30 days available for filing appeal runs not from the date of the order but from the date of communication of the order. In these circumstances it is not possible to hold that the appeal of the tenant-respondents before the Appellate Tribunal was barred by the rule of limitation. So far the merits of their claim is concerned, the findings recorded by the Appellate Tribunal on the basis of the evidence led by the parties conclude the case in their favour. In view of the limited scope of Section 21, the High Court was right in not re-appraising the evidence and in accepting the findings as correct. The learned counsel for the appellants as well as the State counsel contended before us that the appellants are poor and therefore have not been able to produce acceptable evidence in their favour, and having regard to their position in the society their claim should be accepted. We are not in a position to agree, specially as the State which is not in a helpless condition has fought out the case seriously on

their behalf throughout.

9. When the cases were taken up for hearing before us, the learned counsel for the tenant-respondents raised a preliminary objection to the maintainability of the appeals on the ground that five of the respondents were dead and the application for substitution of their legal representatives was earlier rejected by this Court. The argument was that, in the facts and circumstances of the case, the appeals must be held to have abated in their entirety. We do not consider it necessary to decide this question as the appeals, in our view, fail on merits.

10. For the reasons mentioned above, these appeals are dismissed but without costs.

</html