

Konda Venugopala Raju

Vs

State of Andhra Pradesh

(K.Ramaswamy, D.P.Wadhwa JJ)

08.07.1997

ORDER

1. This special leave petition arises from the judgment of the Learned Single Judge of the Andhra Pradesh High Court, made on August 7, 1996 in C.R.P. No. 1917 of 1993.

2. The admitted facts are that the petitioner filed declaration in respect of certain lands under his holding and requested for exclusion of lands from his holding. The primary Tribunal found that the family of the petitioner was holding 0.1358 standards holding of land in excess of the ceiling area on the notified date. It was confirmed by the High Court in C.R.P. NO. 1917 of 1993. Resultantly, notice in Form VI was issued

to the petitioner to surrender the said excess land under Section 10 of the Andhra Pradesh Land Reforms (Celling of Agriculture holdings) Act, 1972 (for short, the 'Act'). The petitioner filed an I.A. before the Land Reforms Tribunal, Eluru a seeking appointment of a Commissioner stating that 5 acres 66 cents of the lands are non-agricultural lands and, therefore, it is required to be excluded from his holding. By order dated March 24, 1990, it rejected the application, but, on revision before the Land Reforms Tribunal in I.A.No. 5/90, the Tribunal allowed one application and directed appointment of the Advocate -Commissioner. The Commissioner submitted his report on July 17, 1990 stating that the aforesaid land were required to be excluded from holding. He found the finding that it considered of two hay-racks and a flowing channel (Vagu) etc. The Tribunal considered the same and rejected the petition. On revision, the High Court has upheld the same in the impugned order. Thus, this special leave petition.

3. It is an admitted portion that in his declaration, the petitioner claimed exclusion of three acres in survey No.73 stating that cattle-sheds, hay-racks etc, were existing on the said land. The Advocate-Commissioner appointed inspected the lands and found no such hay-rack in Survey Nos.97 or 78 however, he found a hay-rack, cattle-shed and two sugarcane heaps in Survey No. 98. Accordingly, the said survey number stood excluded from the holding of the family. This fact would clearly indicate that at the time when the declaration was filed by the petitioner as on the notified date, the hay-racks etc, were not existing in the present Survey No.65/1 in an extent of 5 acres, 66 cents in Polasavapalli village, as found by the Commissioner. Since they were found existing, it would be obvious that after the declaration, became final and was confirmed by ways of dismissal of the civil revision petition by the High Court, the petitioner set up hay-racks etc. and sought to have them excluded.

4. The question, therefore, is; whether such excision is permissible in law? The petitioner has placed reliance on the judgment of this Court in Smt. Sreelatha Bhupal Vs. Government of Andhra Pradesh

[AIR 1990 SC 294]. Therein, the question was as to when the land having vested in the Government must be deemed to have been surrendered by the owner? This Court pointed out that vesting cannot be said to have taken place, if something more is to be done before that. Payment of the compensation is one of other conditions. The lands are said to stand vested from the date the payment of the compensation is made. Until then, the vesting is not complete. It was held as under:

"It is apparent that in spite of proceedings having come to an end under sub-clause 3 of Section 7 and that the compensation has been determined still the land remains with the holder who is enjoying the benefits out of the land until action under Section 8 is completed".

5. The above ratio in Sreelatha Bhupal case is inapplicable to the fact of the present case. Once the proceedings have become final and land owner has been declared to be in excess of the prescribed ceiling area of the land, then the correctness of the same cannot be questioned once over. The surrender proceedings are in the nature of execution of the surplus land declared by the authorities. The declarant cannot set up a new plea or plead afresh that delarant's land are not agricultural land and are, therefore, required to be excluded from his holding. The reason is obvious that under Section 9, once the order of the determining the surplus land has become final, the person holding the land in excess of the prescribed ceiling area is liable to surrender the excess land held by him as enjoined under Section 10 of the Act. At that stage there is no further provision under the Act to reopen the order passed under Section 9 to correct clerical or arithmetical mistakes. This new pled set up by the declarant cannot be characterised either as a clerical or arithmetical mistake but is simply an attempt to reopen the order of declaration of surplus land and to have the compensation redetermining on the basis of new facts. It is impermissiable under the Act. The High Court, therefore, has not committed any error of law warranting interference.

6. The special leave petition is accordingly dismissed.