

PETITIONER:

D. RAMAKRISHNA REDDY & OTHERS , THE CONSERVATOR OF FOREST, NIZAMABAD & ANR.

Vs.

RESPONDENT:

THE ADDL. REVENUE DIVISIONAL OFFICERS & OTHERS , D. RAMAKRISHNA REDDY & ORS.

DATE OF JUDGMENT: 18/08/2000

BENCH:

D.P. Mohapatra, J. & R.P. Sethi, J.

JUDGMENT:

D.P. MOHAPATRA, J.

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These three appeals filed on the basis of the certificate of fitness granted by the High Court of Andhra Pradesh involve common questions of facts and law. Therefore, they were heard together and they are being disposed of by this Judgment. Civil Appeal No. 3012 of 1987 filed by the Conservator of Forests, Nizamabad Division and the Divisional Forest Officer, Kama Reddy, is directed against the Judgment of the Division Bench of High Court of Andhra Pradesh in Writ Appeal No. 731 of 1982, whereas Civil Appeal Nos. 9617 -18/95 filed by D. Ramakrishna Reddy and four others are directed against the Judgment of the Division Bench of the High Court in Writ Appeal Nos. 790 and 676 of 1982. All the writ appeals were filed against the judgment dated 22.4.1982 passed by the Learned Single Judge disposing of Writ Petition Nos. 5793 of 1979 and 637 of 1982. Both these Writ Petitions were filed by D. Ramakrishna Reddy and Others assailing the taking over possession of surplus lands from them under the provisions of the Andhra Pradesh Land Reforms(Ceiling and Agricultural Holdings) Act, 1973 (Act I of 1973). The specific controversy raised in the cases related to the right of the petitioners to cut and remove trees from the forest area which was a part of the surplus land. The case of the petitioners, as appears from the discussions in the Judgment of the learned Single Judge, was that the forest land, though a part of the surplus land in their hands had not vested in the State Government, and therefore, they were entitled to cut and remove the trees standing on the said land before handing over possession of the land to the State Government. The writ petitioners also pleaded that long before the land was declared surplus with them, they had moved the competent authority of the Forest department for grant of transit permits to them for cutting and removing the standing trees. The authorities sat over the matter and did not issue the requisite transit permit. Therefore, the writ petitioners sought a writ of mandamus directing the authorities concerned to issue necessary transit permit.

The State Government, particularly the Officers concerned of the Forest Department, contested the case mainly on the grounds that the entire surplus land in the hands of the writ petitioners had vested in the State

Government along with the forest growth on a portion of the same. The lands including the trees and other forest produce were the property of the State Government and the writ petitioners had no right to cut and remove the trees on any portion of the surplus land which had vested in the State Government.

The learned Single Judge, considering the case of the parties, formulated the following questions for determination :- 1. When does the land surrendered by the landholder vest in the State? 2. Whether the forest produce standing on the land surrendered also vests in the State along with the land? and 3. Whether the petitioners are entitled to any relief on the ground that they had been approaching for the last several years for permits to cut and remove the forest produce on the said land, but were prevented from doing so on account of in-action on the part of or wrong orders passed by the officers of the Forest Department?

The learned Single Judge divided the writ petitioners into three categories; in the first category were included petitioners D. Narasimha Reddy and D. Venkata Reddy, the second category related to D. Ramakrishna Reddy and the third category related to petitioners G. Laxma Reddy and G. Bhoopal Reddy. The appellants herein who were included in the first category surrendered the surplus land in their possession on 1.3.1979. Regarding the second category, the learned Single Judge observed that the petitioner had neither surrendered the surplus land nor possession had been taken by following the procedure prescribed under the Act and the rules, though notice in Form No. IX was served on the petitioner on 12.11.1979. Similarly, in respect of the third category of petitioners, the observation was that neither notice under Form No. IX had been issued nor served on the party. The learned Single Judge held that vesting of the surplus land takes place on the date the Form No. IX notice is issued and served upon the person concerned. In support of the finding, he placed reliance on the language of Section 11 of the Act and the contents of Form IX. The learned Single Judge further held that the surplus land vests in the Government free from all encumbrances from the date of the order to take possession which is stated in Form IX notice. On the basis of the above findings, the learned Single Judge held that in the case of categories 1 and 2, i.e. the writ petitioners 1, 2 & 5, the surplus land had vested in the State in the year 1979 itself, the forest growth on the said land too vested in the State along with the land and no separate compensation or amount is payable on account of such forest growth. In this regard, the learned Single Judge placed reliance on a decision of a Division Bench of the High Court in Writ Appeal Nos. 355-356 of 1982 dated 16.4.1982.

Dealing with the case of writ petitioners 3 & 4 who were included in the third category, the learned Single Judge took the view that the lands proposed to be surrendered by them have not yet vested in the State; in such a situation, there can be no valid objection by the authorities of the Forest department for issuing transit permits. The learned Single Judge directed the forest authorities to issue transit permits in favour of the writ petitioners 3 & 4 G. Bhoopal Reddy and G. Laxma Reddy (since deceased represented by Bhoopal Reddy) in respect of the forest growth on the land, which they had

offered to surrender as surplus land to the State Government. Specifying the area of the said land, the learned Judge observed the extent of land to be 46 acres 95 cents in Survey No. 836 of Hussain Nagar village. Clarifying the fact situation further, the learned Single Judge observed that the total area of 160 acres 88 cents comprising of 53 acres 50 cents of first petitioner, 53 acres 50 cents of second petitioner and 53 acres 80 cents of fifth petitioner which had been surrendered had vested in the State, transit permits for the forest produce in the remaining area was ordered to be issued according to the rules within one month of the date of receipt of the order. The learned Single Judge further ordered that if there are any fruit bearing trees on the land which was surrendered by petitioners 1, 2 & 5 vested in the State, the said petitioners shall be entitled to compensation as per Rule 11 of the Andhra Pradesh (Ceiling on Agricultural Holdings) Rules, 1974.

Being aggrieved by the judgement of the Learned Single Judge, the Conservator of Forests, Nizamabad and the Divisional Forest Officer, Kama Reddy Division filed Writ Appeal No 731 of 1982 which was disposed of by the Judgment rendered on 27.7.1987, the operative portion of which reads as follows:-

"The Forest produce, we affirm, did not vest in the Government on the facts of the case as held in the order under Appeal. The landholders are entitled to compensation. We direct the Government to determine and pay the compensation for the forest growth in four months from today."

The said Judgement is under challenge in Civil Appeal No. 3012 of 1987.

In the other cases, Civil Appeal Nos. 9617-18/95 directed against the Judgment of the High Court dated 10.7.1987 in Writ Appeal Nos. 676 and 790 of 1982 which were filed by the writ petitioners against the Judgment passed by the learned Single Judge in Writ Petition Nos. 5793 of 1979 and 637 of 1982, the Division Bench disposed of the Writ Appeals by the order which reads as follows: "Following the decision in W.A. Nos. 355 and 356 of 1982 dated April 16, 1982 the Writ Appeals are dismissed. The cases do involve a substantial question of law to be decided by the Supreme Court, Oral Leave is granted. Status quo as on today to be continued for two months from today."

That is how these appeals have been filed in this Court.

The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Act I of 1973), as stated in the Preamble, is an act to consolidate and amend the law relating to the fixation of the ceiling on agricultural holdings and taking over of surplus lands and to provide for the materials connected therewith. Section 2 of the Act contains a declaration that the act is for giving effect to the policy of the State towards securing the principles specified in clause (b) and (c) of Article 39 of the Constitution of India. Section 3 which contains the definitions of certain terms used in the Act provides in clause (c), that 'ceiling area' means the extent of lands specified in Section 4 or Section 4-A to be ceiling area;

under clause (j) 'land' means which is capable of being used for purposes of agriculture, or for purposes ancillary thereto, including horticulture, forest land, pasture land, plantation and tope and includes land deemed to be agricultural land under the Act. (Emphasis supplied)

Explanations 1 & 2 to the said sub-Section are not very material for the purpose of the present case. Section 4 contains the provisions regarding ceiling area in respect of an 'individual' and a 'family'. Section 8 of the Act in which provision is made for 'declaration of holding' by a person reads as follows:- (1) Every person, whose holding on the notified date together with any land transferred to him on or after the 24th January, 1971, whether by way of sale, gift usufructuary mortgage, exchange, settlement, surrender or in any other manner whatsoever, and any, land in respect of which a trust has been created by him on or after the 24th January, 1971, exceeds the specified limits shall, within thirty days from the notified date or within such extended period as the Government may notify in this behalf, furnish a declaration in respect of his holding together with such land, to the Tribunal within whose jurisdiction the whole or a major part of his holding is situate containing such particulars including those relating to lands held by him in any part of India outside the State, and in such form as may be prescribed.

2. Without prejudice to the provisions of sub-section (1), the Tribunal shall have power to issue notice requiring any person holding land or residing within its jurisdiction who, it has reason to believe, holds or is deemed to hold land in excess of the ceiling area to furnish a declaration of his holding, or that of his family unit, under sub-section (1) within such period as may be specified in the notice not being less than fifteen days from the date of its communication, and

such person shall furnish the declaration accordingly.

(3) If any person who is liable to furnish a declaration under sub-section (1) or sub-section (2) fails to furnish the declaration within the specified time, the Tribunal may obtain the necessary information in such manner as may be prescribed.

Section 9 in which provision is made for determination of ceiling area lays down :-@@

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"Tribunal shall on receipt of the declaration furnished or information obtained under Section 8, publish the same, and make an enquiry, in such manner as may be prescribed, and pass orders determining whether the person holds or is deemed to hold on the notified date an extent of land in excess of the ceiling area and if so, the extent of land so held in excess as on that date."

Section 10 contains the provisions regarding surrender of surplus land. Sub-Sections(1), (2), (3) & (4) which are particularly relevant for the purpose of the present case are quoted hereunder:-

" (1) 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.

(2) The Tribunal shall serve on every person, who is liable to surrender the land held in excess of the ceiling area under sub-section (1), a notice specifying therein the extent of land which such person has to surrender and requiring him to file a statement within such period not being less than fifteen days, as it may fix, indicating therein, full particulars of the lands which such person proposes to surrender.

(3) If the person on whom a notice is served under sub-section (2), files the statement referred to in that sub-section within the period fixed therefor, and the Tribunal is satisfied, after making such inquiry as it deems fit that the proposed surrender of the land is in accordance with the provisions of this Act, it shall pass an order approving the surrender and the said land shall thereupon be deemed to have been surrendered by such person.

(4) If the person on whom a notice is served under sub-section (2) does not file the statement referred to in that sub-section within the period fixed therefor or files such statement within the period fixed but does not specify therein the entire extent of land which such person has to surrender, the Tribunal may, after giving an opportunity to the person concerned of being heard, itself select, in the former case the entire extent, and in the latter case, the balance of the extent which such person has to surrender, and pass an order to that effect, and thereupon the said land or balance of land, as the case may shall be, deemed to have been surrendered by such person." (Emphasis supplied) This brings us to the provision regarding vesting of land surrendered. Section 11 which deals with the matter is quoted hereunder : "11. Vesting of land surrendered :- Where any land is surrendered or is deemed to have been surrendered under this Act by an owner the Revenue Divisional Officer may, subject to such rules as may be prescribed, by order take possession or authorise any officer to take possession of such land which shall thereupon vest in the Government free from all encumbrances from the date of such order :

Provided that any claim or liability enforceable against that land immediately before the date of vesting in the Government may be enforced only -

(i) against the amount payable under this Act in respect of such land; and (ii) against any other property of the owner;

to the same extent to which such claim or liability was enforceable against that land or other property, as the case may be, immediately before the date of vesting.

Explanation :- Nothing in this section shall affect the provisions of any law, custom, usage or agreement relating to right of easements available for any land vesting in the Government under this section over any other land."

In Section 20 are contained the provisions regarding appeal and Constitution of the Appellate Tribunal etc.

Coming to the provisions of the Rules; in Rule 7 the procedure for surrender of land by a person whose holding is in excess of the ceiling area is laid down. From the provision in the said rule it is clear that it is the

Tribunal which has to identify the excess land to be surrendered to the State. Discretion is vested in the Tribunal to accept or not to accept the statement filed by the holder of surplus land regarding the land to be surrendered. Power is also vested in the Tribunal to itself select the land to be surrendered.

Rule 8 sets out the procedure for taking over possession of the land surrendered. In sub-rule (1) of the said rule, it is laid down that the Revenue Divisional Officer may on receipt of a copy of the order passed by the Tribunal under sub-rule (6) of rule 7 in respect of any land surrendered or deemed to have been surrendered by an owner issue an order in Form IX authorising any Officer not lower in rank than a Revenue Inspector to take possession or occupation of such land. Under sub-rule (2), a copy of the order is to be served on the person who has surrendered or is deemed to have surrendered the land and on any other person in possession or occupation of such land. In sub-rule (4), provision is made that where the person concerned fails to voluntarily deliver possession of the land, the officer authorised to take possession of the land may enter upon the land to take possession thereof after removing any obstruction or any unauthorised occupant, on such land if necessary by using such force as he thinks fit and record a certificate in Form X duly attested by two witnesses. Under the proviso, an exception is made in the case where there is a seasonal crop on the land as on the date of taking possession, and in that case, it shall be allowed to be harvested by the person in actual possession or occupation of the land on that date, at his own risk and no compensation from the Government for any loss or damage shall be allowed under any circumstances. In sub-rule (7) of rule 8, it is provided that all lands vested in the Government shall be registered in the revenue accounts of the village as assessed waste Government lands until their allotment or transfer, as the case may be, in accordance with the provisions of the Act, or until their registry is duly altered in accordance with the rules in force relating to Government lands. Rule 10 deals with disposal of lands vested on the Government.

In Rule 10-A, provision is made for retransfer of land, vested in Government in certain cases.

Rule 11 which makes provision regarding fixation of value for fruit bearing trees and structures etc. reads as follows: - (1) The amount payable for fruit bearing trees shall be at the seinorage rates notified by the District Forest Officer as applicable to the district from time to time and for the Tribunal may require the district Forest Officer in whose jurisdiction the land is situated to furnish an estimate of the amount payable for such trees.

(ii) The amount payable for the structures of permanent nature shall be equivalent to the depreciated value of the structure as on the specified date and for this purpose the Tribunal may require the Executive Engineer, Roads and Buildings Division, in the district to furnish an estimate of the depreciated value of such structure.

From the conspectus of the relevant provisions in the Act and the Rules noted in the preceding paragraph it is

clear that the surplus land which is surrendered or deemed to have been surrendered shall vest in the State on communication of the order passed by the Revenue Divisional Officer to take over possession of such land to the owner/holder/occupier of the said land. The word 'thereupon' in Section 11 refers to such order of the Revenue Divisional Officer. The order in Form 'IX' and the manner in which the said order will be served on the owner are prescribed in sub-rules (1) and (2) of Rule 8. The provisions incorporated in sub-rule (3) to (7) of the said rule are steps to be taken after the surplus land has vested in the State. Vesting of the surplus land in the State is not dependent on taking over physical possession of the land which may be immediately after the vesting or sometimes subsequent thereto. It is our considered view that this conclusion emanates from a harmonious construction of the provisions in section 11 and rule 8 and it is in accord with the object and purpose of the Act.

Regarding payment of compensation for the standing trees or any other forest produce on the land vested in the State Government, our attention has not been drawn to any provision in the Act or in the Rules for payment of such sum. Section 15 of the Act makes provision regarding the amount payable for any land vested in the Government under the Act which is to be calculated at the rates specified in the second schedule. Section 16 makes provision regarding claims for amount payable which is to be determined by the Tribunal. In rule 11 is incorporated the provision for fixation of value for fruit bearing trees and structures. There being no provision in the Act or Rules for payment of any sum for the trees (other than fruit bearing trees) or any other forest produce on the vested land, no claim for compensation for the trees or other forest produce standing on the surplus land surrendered or deemed to have been surrendered arises under the provisions of the Act or the Rule. The tribunals are creatures of the Act and it is not open to them to travel beyond the provisions of the statute. The High Court while examining the correctness or otherwise of the order passed by the tribunal or any action taken by an officer under the Act is also to be guided by the provisions of the statute.

The question that remains to be considered is regarding grant of permit to the respondents for removal of the forest produce. In this regard, it is sufficient to state that even before vesting of the property in the State Government the holders of the land had no right for felling and removing the standing trees or other forest produce from the forest area. They could do so only on getting a permit from the competent officer of the Forest department of the State Government authorising them to fell and remove the trees or other forest produce. Grant of such permit was at the discretion of the competent officer and the power was to be exercised in accordance with the provisions of the statute applicable in the matter and the rules framed in that regard. Therefore, no direction could be justifiably issued in the present proceedings which is relating to vesting of surplus land under the Act, for felling and/or removal of any forest produce from forest area. The resultant position from the discussions in the foregoing paragraphs is that the judgment of the Division Bench confirming the judgment of the learned single Judge of the High Court, that forest produce did not vest in the Government and that the landholders are entitled to compensation is unsustainable.

Consequently the direction to the State Government to determine and pay the compensation for the forest growth is also unsustainable. Accordingly, the Civil Appeal No.3013 of 1987 is allowed and the judgment under challenge is set aside. Civil Appeal Nos. 9617-18 of 1995 are dismissed. In the circumstances, however, there will be no order for costs.

JUDIS