

CASE NO.:
Appeal (civil) 827 of 2002

PETITIONER:
STATE OF A.P.

RESPONDENT:
SINGIREDDY RAMULU & ANR

DATE OF JUDGMENT: 12/12/2007

BENCH:
DR. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

DR. ARIJIT PASAYAT, J.

Challenge in this appeal is to the order passed by the learned Single Judge of the Andhra Pradesh High Court dismissing the Civil Revision Petition filed under Section 21 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (in short the 'Act'). Challenge in the Civil Revision is to the Order passed by the Land Reforms Appellate Tribunal, Karimnagar (in short the 'Appellate Tribunal').

Background facts in nutshell are as follows: One Maqbool Alam surrendered 11 acres and 07 guntas of land in Nanvath village (survey No.4/B) in lieu of excess land of the declarant. The respondent No.1 contended that said Maqbool Alam had transferred ownership of the land under an agreement of sale dated 19.1.1971 and since then he was in continuous possession of the land by paying land revenue and without considering the relevant materials the Land Reforms Tribunal, Adilabad, had accepted the surrender of the land even ignoring the objection filed by the applicant dated 26.9.1978. Reference was made to Section 10(5)(a)(ii) to substitute the stand. It is not to be noted that the Land Reforms Tribunal proceeded on the basis as if no objection was filed by anybody. The Appellate Tribunal was of the view that in view of what is stated in Section 10(5)(a)(ii) and in view of the fact that the appellant was in possession since 1971, the surrender to the extent of 11 acres and 07 guntas of land is set aside and rest of the order was upheld. The Land Reforms Tribunal was directed to receive the recovery proceedings against Maqbool Alam for the balance area as per law.

There was no challenge to the order by Maqbool Alam but the State of Andhra Pradesh, the present appellant filed a Revision as noted above. The High Court found that respondent No.1 was in possession of the land before the notified date and possession of the land was with him on the notified date and, therefore, the finding of the Land Reforms Tribunal could not be sustained. Therefore, it was held that the order of the Tribunal did not suffer from any infirmity.

The learned counsel for the appellant submitted that in view of what has been stated by the Constitution Bench of this Court in Yedida Chakradhar Rao Vs. State of Andhra Pradesh [1990 (2) SCC 523] the view of the Appellate Tribunal and the High Court cannot be maintained.

Stand of the respondent was that since effect of Section 10(5)(a)(ii) was not considered, the Appellate Tribunal directed exclusion of the land in possession of respondent No.1 and there is nothing wrong in such direction. It was, therefore, submitted that the High Court was justified in dismissing the Revision Application.

The learned counsel for the appellant, in reply, had submitted that the land purportedly transferred on the basis of unregistered agreement with no validity in law. Section 10(5)(a)(ii) reads as follows:

Section 10(5)(a) Notwithstanding anything in the Section, it shall be open to the Tribunal to refuse or to accept the surrender of any land--

(ii) the surrender of which is not acceptable on account of a dispute as to the title to the land or an encumbrance on the land or on account of the land being in the possession of any person mentioned in 1[x x x] item (v) of Clause (i) of Section 3 or on account of the land proposed to be surrendered becoming

inaccessible by reason of its severance from the remaining part of the holding; and the Tribunal shall, in every such case, serve a notice on the person concerned requiring him to surrender any other land in lieu thereof; and thereupon the provisions of sub-section (3) and (4) shall, mutatis mutandis apply to such surrender : \024

\023The provision comes into operation when a land holder refuses to accept the surrender of any land. Clause (i) shows that notwithstanding anything contained in the section it shall be open to the tribunal to refuse to accept the surrender of any land.

Clause (2) provides that it is permissible to the tribunal not to accept any surrender if there is a dispute as to the title or on account of land being in possession of any person mentioned in item (4) of clause (i) of Section 3 or on account of land proposed to be surrendered becoming inaccessible by reason of its severance from the remaining part of the holding. \024

The specific case of respondent No.1 is that he is in possession. In fact he had produced certain matters which were noted by the Appellate Tribunal. The High Court, in the impugned order, also noted that respondent No.1 was in possession of land before the notified date.

The question that was considered in Yedida Chakradhararao (supra) was the interpretation of the expression 'held'. In the present case the basic issue was really the applicability of Section 10(5)(a)(ii). The judgment relied upon by the learned counsel for the State, inter alia, noted as follows:

\023The main submission of learned counsel for the appellants is that the express 'holding' has been defined in sub-section (i) of Section 3 of the said Act, the definition section set out earlier, as meaning the entire land held by a person (emphasis supplied) and that the use of the said word \023held\024 in the definition indicates that the person who is supposed to hold the land, must necessarily be the person in possession of the said land; and hence where, in part performance for an agreement of sale or under a lease, the purchaser or lessee has been put in possession of any land, the owner of the said land cannot any longer be regarded as holding the said land and it cannot be said that the said land is held by him. It was submitted by learned counsel that in view of this context although the Explanation to sub-section (i) of Section 3 is very widely worded, its meaning cannot be so extended as to cover a case where the owner of the land is no longer in possession of the land and has parted with the possession thereof under an agreement creating a right, legal or equitable, in the land concerned. We find it difficult to accept this contention. Clauses (i) to (v) of sub-section (i) of Section 3 set out the various capacities in which a person can be said to \023hold\024 land for the purposes of the said Act and among these capacities are \023as a usufructuary mortgagee, as a tenant and as one who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract of sale\024. The very language of sub-section (i) of Section 3 indicates that land can be held as contemplated in the said sub-section by persons in a number of capacities. the Explanation in plain language states that the same land can be held by one person in one capacity and by another person in a different capacity and provides that such land shall be included in the holdings of both such persons. The Explanation thus clearly contemplates that the same land can be held as contemplated under sub-section (i) by one person as the owner and by another person as his lessee or as a person to whom the owner has delivered possession of the land in part performance of an agreement to sell. On a plain reading of the language used in the Explanation, we find it that it is not possible to accept the submission that only where the land is in possession of a person can that land be regarded as held by him.

Apart from what we have pointed out earlier we find that the question which arises before us in this appeal is already covered by the decision of this Court in State of Andhra Pradesh Vs. Mohd. Ashrafuddin. The facts of the case were that out of the total holding of his land the respondent transferred some land to another person under two unregistered sale deeds pursuant to an agreement for sale and gifted away some land to his son. In the return submitted by him under the said Act the respondent did not include in his holding the area transferred under the unregistered sale deeds of the land gifted by him which was in the possession of the

purchase and donee respectively. the Land Reforms Tribunal ignoring the two transfers computed his holding at 1.7692 standard holding and called upon him to surrender land equivalent to 0.7692 standard holding. In revision, the High Court held that the land transferred under the two sale deeds could not be included in the holding of the respondent for ascertaining the ceiling area. In coming to this conclusion, the High Court gave the benefit of Section 53-A of the Transfer of Property Act to the person in possession of the plot pursuant to the contract for sale and treated the land as a part of his holding. On appeal to this Court, a Division Bench comprising three learned Judges of this Court reversed the decision of the High Court and held that the High Court was in error in holding that the land in the possession of the transferee cannot be taken to be a part of the holding of the respondent. It was held by this Court that the expression 'held' connotes both ownership as well as possession. In the context of the definition it is not possible to interpret the term 'holding' only in the sense of possession. The Explanation to the definition of the term 'holding' clearly contemplates that the same land can be the holding of two different persons holding the land in different capacities (See page 486: SCC p.4). The Court went on to state that: (SCC p.4 para 9)

'It is by now well settled that a person in possession pursuant to a contract for sale does not get title to the land unless there is a valid document of title in his favour. In the instant case it has already been pointed out that the transferee came into possession in pursuance of an agreement for sale but no valid deed of title was executed in his favour. Therefore, the ownership remained with the respondent-transferor. But even in the absence of a valid deed of title the possession pursuant to an agreement of transfer cannot be said to be illegal and the transferee is entitled to remain in possession'.
The Court went on to observe that : (SCR headnote)

'There may conceivably be cases where the same land is included in holding of two persons in different capacities and serious prejudice might be caused to one or both of them if they were asked to surrender the excess area. To safeguard the interests of the owners in such a case the legislature has made a provision in Section 12(4) and (5) of the Act. Even so there might be cases where some prejudice might be caused to some tenure holders.'

The court further observed that : (SCR headnote)

'But if the definition of the terms 'holding' is couched in clear and unambiguous language the court has to accept it as it stands. So construed the same land can be a part of the holding of various persons holding it in different capacities. When the terms of the definition are clear and unambiguous there is no question of taking extraneous aid for construing it.'

The question raised for our determination in this appeal is directly covered against the appellant by the decisions of this Court in two cases just referred to by us. In these circumstances, even assuming that there is another equally plausible view regarding the construction and the legal effect of Section 3(i) of the said Act read with Explanation, that would not necessarily justify our reconsidering the question which has already been decided by this Court, although the decision was rendered by a bench comprising only three learned Judges of this Court. In our opinion, unless we find that the decisions in the aforesaid cases are erroneous, it would not be proper on our part to reconsider the same. Apart from this, as we have pointed out earlier, in our view, considering the clear language of Section 3(i) of the said Act read with Explanation to that section, the view taken in Mohd. Ashrafuddin case is, with respect, the correct view, and we are inclined to take the same view on the construction and legal effect of that provision.'

Therefore, the matter is remitted to the Land Reforms Tribunal to consider the case of respondent No.1 in the background of his claim for possession with reference to Section 10(5)(a)(ii) of the Act. It has to be decided as to whether the said provision has any application to the facts of the case. After that determination is done, the parameters set out by the Constitution Bench of this Court has to be

applied. It is ordered accordingly.

The appeal is disposed of with no order as to costs.

JUDIS