

PETITIONER:
SMT. SREELATHA BHUPAL ETC. ETC.

Vs.

RESPONDENT:
GOVT. OF ANDHRA PRADESH REPRESENTED BY ITS SECRETARY, REVENUE

DATE OF JUDGMENT 28/11/1989

BENCH:
OZA, G.L. (J)
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OZA, G.L. (J)
FATHIMA BEEVI, M. (J)

CITATION:
1990 AIR 294 1989 SCR Supl. (2) 314
1990 SCC (1) 318 JT 1989 (4) 578
1989 SCALE (2) 1181

ACT:
Andhra Pradesh Ceiling on Agricultural Holdings Act,
1961: ss. 7, 8, 10 & 19--Surplus land--Surrender
of--Compensation determined--Revision of--Whether beyond
jurisdiction.

HEADNOTE:

Sub-clause (2) of s. 7 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 mandates the Revenue Divisional Officer to serve a notice on every person liable to surrender land in excess of the ceiling area requiring him to file a statement indicating the land which he proposes to surrender. Sub-clause (3) requires the Revenue Divisional Officer to pass orders on that statement approving the surrender, and the said land shall thereupon be deemed to have been surrendered. Section 8 provides for the Revenue Divisional Officer to take over such land on payment of compensation under s. 10. Section 10 lays down the mode of compensation.

In the instant case, proceedings under s. 7(3) of the Act in respect of appellant's land having concluded the Revenue Divisional Officer had made an order under s. 10 fixing the compensation. The District Revenue Officer however instead of making the payment, issued a notice, purporting to be under s. 19(1), as amended, proposing to revise the said order.

The appellant filed a writ petition contending that when the proceedings are concluded under sub-clause (3) of s. 7 the surrender is complete and the land vests in the State, that what remains under the scheme of s. 10 is only the question of determining compensation, and once that is determined the authorities have no jurisdiction to revise the compensation.

On behalf of the State it was contended that cl. (3) of s. 7 uses the words "deemed to have been surrendered" which indicates that although by an order passed by the Revenue Divisional Officer the proposal about the surrender of land is finalised but still it is only

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deemed surrender, and that the land only vests in the State when it is taken over after payment of compensation in

accordance with s. 8.

The High Court took the view that unless taking over is completed under s. 8 the land does not vest in the State and, therefore, it could not be said that the proceedings under the Act had come to an end and at this stage if the authorities have jurisdiction to revise the compensation it could not be said that the authorities have done something beyond their jurisdiction.

Dismissing the appeals, the Court,

HELD: The scheme of s. 7 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 indicates that the surplus land which a holder will surrender is finally determined when an order under cl. (3) is passed. However, in spite of the finality of these proceedings the legislature instead of using the phrase "have been surrendered" in the said clause uses the term "deemed to have been surrendered." It is clear from these words that something more remains to be done, and that is what is provided in s. 8 by authorising the Revenue Divisional Officer to take over the land, which is deemed to have been surrendered, on payment of compensation determined under s. 10. It is only after this taking over that the land vests in the State. [319G; 320A; 320C-D]

It is, therefore, apparent that orders under s. 8 can only be passed after compensation as determined under s. 10 is paid, and so far action under s. 8 has not been taken it could not be said that the land vests in the State. The competent authorities can revise the orders passed under s. 10 if an amendment has taken place in between. [321H; 321B]

In the instant case, action under s. 8 had not been taken. The High Court was, therefore, right in rejecting the writ petitions. [321H; 322B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1 147 of 1975.

From the Judgment and Order dated 28.12.1973 of the Andhra Pradesh High Court in W.P. No. 4818 of 1973. With Civil Appeal Nos. 1054-55 of 1976, 1503 and 1546 of 1977

T.S. Krishnamurthy Iyer, C. Sitaramiah, K. Madhava Reddy, Chella Sitaramani, K. Ram Kumar, Mrs. J. Ramachandran, Mrs. Anjani, TVSN Chari, A.V. Rangam, Jagan Rao and A.V.V. Nair for the appearing parties.

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The Judgment of the Court was delivered by

OZA, J. This appeal arises out of the judgment of the High Court of Andhra Pradesh in Writ Petition No. 48 18 of 1973 wherein the writ petition filed by the Appellant/Petitioner was dismissed.

In the writ petition before the High Court the petitioner sought mandamus directing the respondent to pay forthwith to the petitioner compensation for the lands surrendered by her under the Andhra Pradesh Ceiling on Agricultural Holdings Act 1961. A further direction was sought prohibiting the third respondent from proceeding with the revision under section 19(1) of the Act as amended by Act No. I of 1972 w.e.f. 19.1.72.

Necessary facts are that the petitioner's husband owned extensive lands in Gadwal. After the Act came into force the Revenue Divisional Officer, Gadwal issued a notice under section 3(2) of the Act directing the petitioner's husband to file a declaration of his holdings. The petitioner's husband accordingly filed the declaration. Thereafter he died in 1969 leaving behind the petitioner and three minor

children.

The Revenue Divisional Officer held an enquiry under section 6 of the Act and by his order dated 25.1.71 he held that the petitioner's husband legal representatives were holding 29.72 family holdings in excess of the ceiling area which they were entitled to hold.

A notice was then issued to the petitioner under section 7(2) on 25-1-71 requiring the petitioner to file a statement indicating the land which she proposes to surrender.

The petitioner thereupon filed a detailed statement of lands she proposes to surrender on 19.3.71.

The Revenue Divisional Officer on being satisfied after an enquiry that the lands proposed to be surrendered satisfy the requirements of sec. 7(1) and (2) of the Act passed an order on 31.3.71 under section 7(3) of the Act approving the surrender of 7 13.16 acres (an equivalent of 29.72 family holdings) by the petitioner.

Thereafter the petitioner filed an application before the Revenue Divisional Officer for fixation of compensation in respect of lands surrendered by her under section 10 of the Act. The Revenue Divisional Officer fixed the compensation of Rs.6,44,265.09 in respect of lands surrendered by her.

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The Revenue Divisional Officer published a notification containing particulars of the lands surrendered by the petitioner and the compensation payable therefor in the Andhra Pradesh Gazette on 7.7.71 according to section 11 of the Act.

Instead of paying the compensation as determined, the District Revenue Officer Mahboobnagar issued a notice dated 21.3.72 proposing to revise the orders of the Revenue Divisional Officer dated 15.4.71 fixing compensation of the lands surrendered by the petitioner. This notice is purported to have been issued under section 19 clause 1 of the Act as amended.

The petitioner filed an objection contending that the 3rd respondent had no jurisdiction to revise the order fixing compensation which was passed before, as on the day the Divisional Officer issued notice the order sought to be revised had become final. In spite of this the 3rd respondent has not disposed of the revision proceedings and it because of this writ petition was filed before the High Court.

Learned counsel for the appellant contended before us that once under section 7 the land which is in excess of the ceiling limit is determined and a statement of surrender is filed by a holder which is accepted by the Revenue Divisional Officer under clause 3 of section 7, the land vests in the State and thereafter the authorities have no jurisdiction to attempt to revise the compensation or any order which has already been passed under the Act.

Whereas on behalf of the State it was contended that clause 3 of section 7 uses the word "deemed to have been surrendered" which clearly indicates that although by an order passed by Revenue Divisional Officer the proposal made by the holder about the surrender of land is accepted and it is finalised but still it is only deemed surrender as even after this land does not vest in the State but it only vests as has been contemplated under section 8 which clearly lays down that the land which is deemed to have been surrendered under section 7 only vests in the State when it is taken over after payment of compensation in accordance with section 8.

The High Court accepted the contention of the State and

it took the view that unless taking over is completed under sec. 8 the land does not vest in the State and therefore it could not be said that the proceedings under this Act has come to an end and at this stage when the land has yet not vested in the State if the authorities have jurisdiction

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to revise the compensation it could not be said that the authorities have done something beyond their jurisdiction.

The main argument before the High Court and before us on behalf of the appellant is that once under the scheme of the Act an order is passed by the competent authority under section 7 sub-clause 3 so far as the holder is concerned he has surrendered the surplus land and what remains under the scheme of section 10 and 11 is only the question of determining of compensation and once that is determined there is no option to the authorities but to pay compensation to the person who has surrendered the holding in accordance with the scheme of section 7 of the Act.

It is not in dispute that the proceedings were taken under Andhra Pradesh Ceiling on Agricultural Holdings Act 1961 and after the declaration was filed the ceiling area was determined in accordance with section 6. It is also not in dispute that in accordance with section 7 sub-clause 2 a notice was served on the petitioner/appellant for filing a statement indicating the land which she proposes to surrender and it is after the statement was filed by the appellant that an order in accordance with sub-clause 3 of section 7 was passed. Section 7 reads:

"(1) If the extent of the holding of a person is not more than the ceiling area determined under section 6, he shall be entitled to retain such holding, but if it is more than the ceiling area, he shall be liable to surrender the extent of land in excess of the ceiling area.

(2) The Revenue Divisional Officer shall serve on every person who is liable to surrender land in excess of the ceiling area under sub-section (1), a notice specifying therein the extent of land which he has to surrender, and requiring him to file a statement in such manner and within such period as may be prescribed indicating therein the land which he proposes to surrender.

(3) If the person, on whom a notice is served under sub-section (2), files the statement referred to in that subsection, within the prescribed period and Revenue Divisional Officer is satisfied, after making an inquiry in the prescribed manner, that the proposed surrender of the land is in accordance with the provisions of sub-sections (1) and (2), he shall pass an order approving the surrender and the

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said land shall thereupon be deemed to have been surrendered by such person.

(4) If the person, on whom a notice is served under subsection (2), does not file the statement referred to in that sub-section within the prescribed period, or filed such statement within the prescribed period, but does not specify therein the entire extent of land which he has to surrender, the Revenue Divisional Officer may himself 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 the balance of land, as the case may be, shall be deemed to have been surrendered by such person".

The scheme of this section indicates that when the extent of holding of a person is determined under section 6 and if while determining it under section 6 it is found that he is holding more than the ceiling area he shall be liable to surrender the extent of the land which is in excess of the ceiling area. Sub-clause 2 of this section contemplates that the Revenue Divisional Officer will serve a notice on all such persons who are liable to surrender the land in excess of the ceiling area and this notice will specify the extent of the land which he has to surrender and a direction that the person concerned will file a statement indicating the land which the holder proposes to surrender.

Sub-clause 3 of this section contemplates that after the notice under sub-clause 2 is served and the person concerned files his statement within the prescribed period, the Revenue Divisional Officer if he is satisfied from the statement filed in response to a notice under clause 2 about the land which the holder proposes to surrender, he shall pass an order approving the surrender of the land.

Sub-clause 4 contemplates a situation where after a notice is served under clause 2 the holder does not file a statement as contemplates under clause 3.

It is, therefore, clear that so far as the surplus land which a holder will surrender is concerned it is finally determined when an order under clause 3 of section 7 is passed by the Revenue Divisional Officer but it is significant that in spite of the finality of these proceedings the legislature uses the phrase "thereupon deemed to have been surrendered by such person". It is significant that instead of using the

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phrase "have been surrendered" the legislature uses the term "deemed to have been surrendered" and it is clear from these words that something more remains to be done. Section 8 reads as under:

(8) "Where any land is deemed to have been surrendered under section 7 by an owner, the Revenue Divisional Officer may, by order, take over such land on payment of compensation under section 10, and such land shall be disposed of in the prescribed manner by assignment to landless poor persons".

This provides for vesting 'of the land deemed to have been surrendered by the owner. This terminology used in the heading of the section itself indicates that even after determination of the surplus land which is deemed to have been surrendered' vesting only takes place when something more is done and that is what is provided in this section. This section authorises the Revenue Divisional Officer to take over the land on payment of compensation, compensation which is determined u/s 10 and land which is deemed to have been surrendered u/s 7 and it is only after this taking over under section 8 that under the scheme of this section the land vests in the State and thereafter it is provided that such land shall be disposed of in the prescribed manner by assignment to landless poor persons.

A perusal of the scheme of the section therefore clearly indicates that after an order is passed under sub-clause 3

of sec. 7 although the proceedings for surrender of the surplus land and the selection of the land which is sought to be surrendered is complete but still it is not surrender but it is only deemed to have been surrendered which clearly indicates that so far as the holder is concerned he has finally got determined the lands which he will surrender as surplus which in due course will vest in the State for distribution to other landless persons but it is also clear from the language of section 8 and also from the language used in sub-clause 3 of section 7 that unless the land which is deemed to have been surrendered is taken over by payment of compensation determined under section 10 it does not vest in the State. The scheme of section 8 therefore indicates that vesting in the State that is taking over by the Revenue Divisional Officer and payment of compensation has to be simultaneous with and an order under section 8. It, therefore, appears that after proceeding for determination of surplus under section 7 is completed, proceedings for determination of compensation will start as is provided in section 10 and it is only when compensation is also finally determined that under section 8

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taking over will take place after the compensation is paid.

It is, therefore, clear that after the proceedings have been completed in accordance with section 7 sub-clause 3 and even after the compensation has been determined but action under section 8 has not been taken it could not be said that the land vests in the State. The competent authorities can revise the orders passed if an amendment has taken place in between. 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.

Under these circumstances therefore the contention advanced by the appellant that when the proceedings are concluded under subclause 3 of section 7 the surrender is complete and the land vests in the State cannot be accepted as admittedly action under section 8 has not been taken.

On the basis of some orders which appear to have been passed under section 10 it was contended that taking over is complete but in these orders only language of section 10 is reproduced. Section 10 reads as under:

"Compensation for lands taken over by the Revenue Divisional Officer: (1) The compensation payable for any land taken over by the Revenue Divisional Officer under section 8 or section 9 shall be an amount calculated at the rates specified in the Second Schedule. Where there are any structures of a permanent nature or trees on such land the value of such structures or trees shall be determined by the Revenue Divisional Officer in the manner prescribed and paid to the person who is entitled thereto.

(2) The compensation payable under sub-section (1) shall be paid either in cash or in bonds, or partly in cash and partly in bonds as the Government may deem fit. The bonds shall be issued on such terms and carry such rate of interest as may be prescribed."

But admittedly no order could be produced under section 8. It is clear that orders under section 8 can only be passed after compensation as determined under section 10 is paid.

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Therefore no advantage could be taken from these orders under section 10. It was also alleged on behalf of the State that against these orders under section 10, it were the appellants (some of them) who filed writ petitions in the High court challenging the compensation and thus question of determination of compensation itself remained pending.

Consequently, in our opinion, the High Court was right in rejecting the writ petitions filed by the appellants. We therefore see no reason to entertain this appeal. It is therefore dismissed. No order as to costs.

For the reasons stated above, Civil Appeal Nos. 1054/76, 1055/ 76, 1503/77 and 1546/77 are allowed. No order as to costs.

P.S.S.
dismissed.
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Appeal