

Krishna Murthy and ors. Vs. Government of Andhra Pradesh

Krishna Murthy and ors. Vs. Government of Andhra Pradesh

SooperKanoon Citation : sooperkanoon.com/426404

Court : Andhra Pradesh

Decided On : Sep-29-1978

Reported in : AIR1979AP85

Judge : A. Sambasiva Rao C.J. and ;Jeevan Reddy, J.

Acts : Andhra Pradesh Agricultural Indebtedness (Relief) Act, 1977 - Sections 2, 4, 4(1), 4(2), 4(3), 4(4), 5, 5(1), 5(4), 6, 6(4), 7, 13 and 17; Constitution of India. Articles 14, 19, 19(1), 31C, 46 and 254

Appeal No. : Writ Petn. Nos. 896 and 897, etc., of 1977

Appellant : Krishna Murthy and ors.

Respondent : Government of Andhra Pradesh

Advocate for Def. : Advocate-General and Govt. Pleader for ;Food and Agricultural Dept., ;Govt. Pleader for F.A. and ;P. Yadgiri Rao, Adv.

Advocate for Pet/Ap. : P. Babulu Reddy, ;P. Prabhakar Reddy, ;M.S.K. Sastry, ;C. Poorniah, ;Y. Sivarama Sastry, ;Y. Venkata Sastry, ;R.V. Subba Rao, ;R. Prasad and ;S.L. Chennakesava Rao, Adv.

Judgement :

Sambasiva Rao, C.J.

1. Quite a large number of creditors in the rural areas in the State of Andhra Pradesh are challenging in these writ petitions the validity of the Andhra Pradesh Agricultural Indebtedness (Relief) Act. 1977 (Act No. 7 of 1977) hereinafter referred to as 'the Act'. After the Legislature of Andhra Pradesh Passed it, the Governor of the State reserved it for the assent of the President of India on the 15th of April. 1977 and it was given by the President on the 29th of April, 1977. The Act was intended 'to provide relief from indebtedness to agricultural labourers, rural I artisans and small farmers in the State of Andhra Pradesh and for matters connected therewith.'

2. The indictment of the Act is by way of challenging the validity of Sections 3 (i) 3(t), 4 (1), 4 (2) (b), 5 (1), 5 (4), 6 (4) and 13. Sri Babulu Reddy who mounted the main attack on behalf of the petitioners, maintained that these provisions offend Art. 14 and cls. (f) and (g) of Art. 19(1). He further arraigned the declaration contained in S. 2 of the Act which was made to give effect to the principles specified in Art. 46 of the Constitution a, wholly purposeless and impracticable. Other learned counsel Sri Poornaiah and Sri Venkata Sastry raised some incidental doubts about the validity of some of these provisions. They maintained that the challenged provisions constitute the core of the Act and if they fail the test of validity, the entire Act is rendered ineffective and inoperative.

3. It is essential in order to test the validity of the impugment of the Act by the learned counsel, to have a conspectus of its essential features and provisions. The Act was preceded by the issuance of an Ordinance on

29th of Dec., 1976. Section 2 declares that the Act 'is for giving effect to the policy of the State towards securing the principles specified in Art. 46 of the Constitution' Patently this declaration has been made by the Legislature to bring the Act under the protective wings of Art. 31-C Section 3 contains definitions. Since the relief under the Act is proposed to be given to agricultural labourers, rural artisans and small farmers, we will first notice their definitions,

4. Clause (b) defines 'agricultural labourer' as 'a person who does not hold any agricultural land and whose principal means of livelihood is by manual labour on agricultural land, in the capacity of a labourer on hire or an exchange, whether paid in cash or in kind or partly in cash and partly in kind'. The meaning of the expression 'rural artisan' is given in cl. (r) as 'a person who does not hold any agricultural land and whose principal means of livelihood is production or repair of traditional tools, implements and other articles or things used for agriculture or purposes ancillary thereto, and includes a person who normally earns his livelihood by practicing a craft either by his own Labour or by the labour of all or any of the members of his family in rural area' It is cl. (t) which defines 'small farmer' as 'a person whose principal means of Livelihood is income derived from agricultural land and who holds and personally cultivates, or who cultivates as a tenant or share cropper or mortgagee with possession, agricultural land which does not exceed m extent.-(i) in the case of persons other than the members of the Scheduled Tribes, one hectare, if it is wet, or two hectares, if it is dry: (ii) in the case of the members of the Scheduled Tribes, two hectares, if it is wet, or four hectares, if it is dry but does not include any person whose annual household income, other than from agriculture exceeds one thousand and two hundred rupees in any two years within three years immediately preceding the commencement of this Act.

Explanation: For the purposes of computing the extent of land under this clause, one hectare of wet land shall be deemed to be equal to two hectares of dry land.'

5. From these definitions certain basic features of the intendment of the Legislature in making the law emerge. The first and foremost characteristic feature of these definitions is to give debt relief to persons who live on land and depend on it for their livelihood either by putting their manual labour in agriculture or by producing or repairing tools, implements and other articles used for agriculture in who personally cultivate agricultural land. Secondly, since agriculture is, to a very large extent, confined to the rural areas of this country. particularly this State, the Act Intends to give relief to these three categories of people in the rural areas. Thirdly the benefit of the Act is clearly limited to Persons of small means, that is to say, those persons whose principal means of livelihood are derived by manual labour or by preparing agricultural implements or by personally cultivating one hectare of wet land or two hectares of dry land. In the case of Scheduled Tribes, however, his extent of land is doubled At the same time it is made perfectly clear that all persons, whose annual household income ether than from agriculture exceed one thousand two hundred rupees in any two years within three years immediately Preceding the commencement of the Act, are excluded from the purview of the expression 'small farmer.'

6. Section 4 (1) declares that despite any other law, contract or instrument 'with effect on and from the commencement of this Act, every debt including interest, if any, owing to any creditor by any agricultural labourer, a rural artisan or a small farmer shall be deemed to be wholly discharged.' It is thus ,manifest that this relief from the burden of indebtedness is clearly intended and specifically provided for the benefit of the rural poor. We said for the benefit of rural poor because the three categories of the persons to whom relief is gives under the Act constitute and overwhelming majority of the poor rural masses.

7. Clause (a) of S. 4 (2) enjoins upon Civil Courts not to entertain any suit or proceeding for recovery of any amount of the debt which is deemed to be discharged under sub-a. (1). If the suit is against any other person, it is not affected by this provision in so far as the suit relates to such other person. Clause (b) declares that all Suits and other proceedings including appeals, revisions, attachments or execution proceedings pending at the commencement of the Act for recovery of any debt referred to in sub Sec, (1) with interest shall abate. However, sales of movable and immovable Properties held, concluded and confirmed before the

commencement of the An do not come within the purview of the clause. A debtor undergoing detention in a civil prison in execution of a decree passed for money in respect of such debt shall be released Clause (a) of S 4 (3) provides that every movable property pledged by a debtor whose debt is deemed to be discharged under sub-s. (1) stands released in favour of such debtor and the creditor is required to deliver the same at once. Likewise mortgage also is declared under cl. (b) to stand redeemed and the mortgaged property is required to be released to the debtor.

8. Sub-section (1) of S. 5 requires every creditor under S. 4 (3) (a) to furnish to the Tribunal constituted under the Act a statement in the prescribed form giving all the details of the pledged movable property. Sub-secs. (2) and (3) empower the Tribunal to conduct an enquiry and to direct the creditor to produce before the specified date the pledged movable property. Sub-sec. (4) goes a step further and lays down that If the movable property, which had been pledged by the debtor, is in the possession of any transferee of the creditor, it is the duty of the creditor to release that property from the transferee and produce it on or before the date specified in the order mentioned in sub-s. (3). According to sub-s. (5), if there is failure to produce the movable property, the Tribunal is given power to enforce such production by issuing necessary orders.

9. Section 6 enables the debtors to apply for an order releasing the mortgaged property and for the grant of a certificate of redemption. Sub sec (2) and (3) empower the 'Tribunal to issue necessary directions in that behalf. Under sub-s. (4) of S. 6 the Tribunal is empowered, in cases of mortgaged property having been transferred to any bank, to recover such amount as, due to the bank in respect of the mortgaged property as if it were an arrear of land revenue.

10. Section 7 enables any person aggrieved by any order or decision made by the Tribunal under S. 5 or S. 6 to prefer an appeal to the Appellate Tribunal. Constitution of the Tribunals and Appellate Tribunal consists of single member who is a Tahsildar. The Appellate Tribunal shall also consist of single member who shall be an officer not below the rank of a Collector. Sections 9, 10, 11 and 12 relate to the powers of the Tribunals and the Appellate Tribunals, execution of their orders, penalties that are liable to be imposed and also the offences that may be committed by the companies.

11. Section 13 places the burden of proof on the creditor in any suit or proceeding to prove that the debtor is not entitled to the protection of the Act Section 14 bars the jurisdiction of Civil Court which are within the purview of the Tribunals constituted under the Act.

12. The Government is empowered under S. 16 to make rules under the Act Section 17 says that the provisions of the Act shall be in addition to, and not in derogation of any other law for the time being in force. Under S. 18 power is conferred on the Government to issue general or special orders to remove any difficulty experienced in implementing the provisions of the Act. But those orders shall not be inconsistent with the Provisions of the Act.

13. The above resume' of the material provisions of the Act clearly brings out the intention of the Legislature to give relief from indebtedness to agricultural labourers, rural artisans and small farmers. Article 46 of the Constitution directs the State to promote with special care the educational and economic interests of the weaker sections of the people and, in particular of the Scheduled Castes and the Scheduled Tribes and protect them from social injustice and all forms of exploitation. The purpose of the Act as declared in S. 2 is to give effect to these principles. An examination of the provisions of the Act leaves no doubt that they are intended to implement special duty entrusted to the State the Constitution to promote economic interests of the weaker sections of people including Scheduled Castes Scheduled Tribes and to protect from economic exploitation. The categories of the persons, to whom the Act gives relief from indebtedness, constitute an overwhelming majority of the weaker sections of the people of the State It is well known and well established that these weaker sections have, for generations, been victims of grinding indebtedness and of exploitation arising therefrom Many sociological and economic studies have been made into the conditions of these weaker sections and all of them in one voice pronounced that indebtedness has been a chronic debilitating burden

on them, with the consequence that they have become victims of exploitation through such indebtedness. Undoubtedly, this Act promotes the economic interests of the weaker sections of the people and protects them from exploitation arising out of indebtedness. The policy enunciated under Art. 46 of the Constitution is the very heart of this enactment.

14. We cannot, therefore, uphold the argument of Sri Babulu Reddy that charge of debt is not betterment of economic interests of weaker sections. In his submission, economic interests of such sections of the people would be served by giving them loans at cheaper rates. Making available loans to such weaker sections, at cheaper rates would certainly help the needy persons. There cannot be any two opinions about it. But at the same time, it shall not be forgotten that unless and until these weaker sections are released from the heavy burden of their indebtedness, giving them any loans would not help them: those loans would only go into the hands of their creditors. It was also maintained that wiping out the principal debt is not promoting economic interest and does not protect the concerned persons from exploitation which is the intention of Art. 46. We have already explained how wiping out the indebtedness of these poor people saves them from exploitation.

15. It was further contended that all these poor people depend for their day to day life and activity on small loans and debts given to them by the local money-lenders. If all their debts are wiped out, no local creditor would be here. After coming forward to advance them loans, it was said that this would stifle the very existence of the poor sections. It is here the proposal of providing alternative sources of loans and aids to the weaker sections should be considered. It is common knowledge that strenuous efforts are now being made to develop schemes through banks and co-operatives to help the weaker section by giving them financial loans and aid. An alternative system of economic help to these sections is being organized by the people. Therefore, it cannot be said that the purpose of Art. 46 would not be served by wiping the indebtedness of the poorer sections of the people.

16. All the above said endeavor has been made by Sri Babulu Reddy to show that since the purpose of Art. 46 is not served by this enactment, the protective umbrella of Art. 31-C of the Constitution would not be available. It may be noted here that this article, as previously worded, saved only laws giving effect to the directive principles specified in cl (b) or d (c) of Art. 39 from attack on the ground of infringement of fundamental rights contained in Arts. 14, 19 and 31. By virtue of the 42nd amendment, the scope of the Article has been widened to cover all the directive principles contained in Part IV. In the light of that provision of Art. 31-C, the State Legislature while enacting this law gave the declaration that it was being made for securing the principles specified in Art. 46. Therefore, it is not permissible to challenge the validity of the impugned Act on the basis of Arts. 14, 19 and 31. Sri Babulu Reddy, however, confined his challenge to the several provisions of the Act on the ground that they offend Art. 14 and subclauses (f) and (g) of Art. 19(1). In view of Art. 31-C, he cannot challenge the Act on the basis of those provisions.

17. He went even a step further and contended that if for any reason the protection under Art. 31-C is held to be available to this law, that article, as amended by the 42nd amendment, is beyond the amending power of the Parliament as it destroys the basic structure of the Constitution. Reliance is placed on the observations of Mathew, J. and Chandrachud, J. (as he then was) in *Smt. Indira Nehru Gandhi v. Raj Narain*, : [1976]2SCR347 that Art. 14 is a basic postulate of the Constitution. Sri Babulu Reddy argued that since Art. 31-C, as it is amended by the 42nd amendment, sets at naught Art. 14, it is beyond the amending power of the Parliament.

18. In *Kesavananda v State of Kerala* : AIR1973SC1461 the majority view was that the first part of

Art. 31-C was valid and the second part invalid. It is held that the law purporting to be made under Art. 31C to give effect to the objects of the State policy in Art. 39 (b) and (c) may be called in question on the ground that it does not in fact give effect to the above objects and that a provision making a declaration by the Legislature conclusive and final and barring enquiry by the Court is invalid. We have already examined the purpose and the intention of the enactment, which is under challenge before us, and we have held that the main purpose of the Act was to implement the policy enunciated in Article 46 of the Constitution.

19. Even going by the merits, the contention based on Arts 14 and 19 is not Valid. In para 12 onwards in W.P 896/77 Ss. 3 (i), 3 (t), 4 (i), 4 (2) (b), 5 (1), 5 (4), 6 (4) and 13 of the statute were alleged to have offended Arts. 14 and 19(1) (f) and (g) In our opinion, none of the said provisions suffers from the vice. We would only briefly refer to the attack on these provisions because they are well covered by the decisions of the Supreme Court in *Fatehchand v. State of Maharashtra*. : [1977]2SCR828 and *Pathumma v. State of Kerala*, : [1978]2SCR537 .

20. In regard to S. 3 (i) it was pointed out that debts to the Central Government, Government companies, Life Insurance Corporations and some others are excluded from the definition of 'debt' thereby creating an unreasonable classification. We do not contribute to the view that this is unreasonable classification. All the debts which are excluded from the definition of 'debt' are either those which relate to public funds or those intended for the essential purposes of the debtor or those which serve social purposes. That is altogether from a debt advanced by a mere lender, The two classes of debts vary in their very nature. So, there is no unreasonable classification.

21. The definition of 'small farmer' contained in S. 3 (t) is challenged on the ground that fixing a land limit is unscientific. There is no doubt that in defining the expression 'small farmer', the income is taken into account. In fact it is expressly stated that any person whose annual household income other than agriculture exceeds Rs. 1,200/- in any two years within three years immediately preceding the commencement of the Act would not be a 'small farmer'. It is thus manifest that the definition is based on small income these farmers derive from their holdings.

22. Section 4 (1), which provides for the discharge of debts including the principal, is challenged as being opposed to subcls. (f) and (g) of Art. 19(1), This objection cannot be countenanced in view of cls (5) and (6) of Art. 19, because what S. 4(1) does is to impose a reasonable restriction on the right to property of the creditors in the interests of the general public and for protection of the interests of Scheduled Tribes. As we have already pointed out, the beneficiaries under the Act constitute an overwhelming majority of the general public.

23. An objection is taken to c1 (b) of S. 4 (2) which provides for the abatement of all suits and proceedings which are pending at the commencement of the Act against any debtor for recovery of any debt mentioned in S. 4 (1) including interest. The attack is on the same as the one relating to S. 4 (1) and we repel it for the reasons we have briefly stated above.

24. The requirement under S. 5 (1) that a creditor should file a statement in cases of property pledged was assailed on the ground that it was a wholly unreasonable provision since the entire information would be available with the debtor and not the creditor The same is the attack against S. 13 which places the burden on the creditor to prove that the debtor is not entitled to the protection of this Act. It was argued that all this information would be available with the debtor and it was unreasonable to require the creditor to do the things postulated by S. 5 (I) and S 13. All these debtors, who are beneficiaries under the Act, are very ignorant and poor persons and it is unreasonable to expect them to have any record or any information which would help in giving them relief Most of them would not have any material or information with them which could be produced before the Tribunal or Court. On the other hand, it is the creditors, most of whom live in, the same areas, who have full knowledge: Of these matters and of the debtors. Therefore, it is not unreasonable to expect them to do things which are required under S. 5 (i) and S. 13.

25. The provision in S. 5 (4) that where the movable property pledged by the debtor is in the possession of any transferee of the creditor, the creditor himself shall redeem the said property from such transferee and produce it, was challenged as expropriatory and unreasonable. It was pointed out that most of these properties were pledged by the debtors in their turn to raise funds and it would be wholly unreasonable to expect them to pay to the transferees the amount due. The provision in S. 5 (4) is the natural corollary to the relief given under the Act and if it is not there, there is the danger of a substantial portion of the Act being defeated. Otherwise, in every case of pledge, the creditor may put up the plea that he had transferred it to

some other person thus depriving the debtor of the relief granted by the Act. So, we cannot subscribe to the criticism levelled against this provision.

26. Lastly S. 6 (4) which refers to the mortgaged property being assigned to any bank was questioned on the ground that recovering the required amount from the creditor to pay the bank and releasing the mortgaged property is a highly expropriatory and arbitrary provision. What we have said in respect of S. 5 (4) would apply to this aspect as well.

27. We are thus unable to hold that any of these provisions are repugnant to Arts. 14 and 19(1) (f) and (g) of the Constitution.

28. We have not discussed the above contention in detail because these matters have been fully considered and decided by the Supreme Court in two reported cases viz., *Fatnehchand v. State of Maharashtra*, : [1977]2SCR828 (supra) and *Pathumma v. State of Kerala*, : [1978]2SCR537 (supra). In the former case the Court was considering the validity of the Maharashtra Debt Relief Act which is, in material particulars, analogous to the Act now impugned before us. Krishna Iyer, J. considered most of these Maharashtra Debt Relief Act which is, in material particulars, analogous to the Act now impugned before us. Krishna Iyer, J. considered most of these aspects and repelled all of them. Likewise in the latter case the validity of the Kerala Agriculturists Debt Relief Act which is analogous to the present one was questioned. Therein the learned Judges laid down seven guidelines to determine the question of reasonableness of restriction under Art. 19. It was held that the provision of the Act therein were reasonable restrictions within the scope of cls. (5) and (6) of Art. 19. The provision of the Kerala Act are substantially similar to the Provisions of the Andhra Pradesh Act. We are also informed that there is another later pronouncement by the Supreme Court on the same lines. But the learned counsel on either side could not trace and place it before us. Therefore, we are not referring to it.

29. Sri Venkata Sastry one of the learned counsel for the petitioner, argued that S. 5 is inconsistent with S. 13 and that in view of the existence of the Other Debt Relief Act there is no need for this law. This contention has no force at all because S. 4 clearly declares that notwithstanding all the Debt Relief Acts, further relief is being given to new beneficiaries. The relief now given to these beneficiaries is not available on the same lines and in the same manner in those Acts. That is why in S. 17 it is declared that the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in

30. Lastly we must consider some points raised by Sri Challa Poornaiah. The first of them is that S. 4 (3) (b) relates to a mortgage which is an item dealt with by the Central law viz., T. P. Act. Since this provision in the State Act is contrary to the Transfer of Property Act, it is ineffective and inoperative. But this argument is untenable because the subject is in the Concurrent List and the impugned Act has received the assent of the President. Therefore, in the State of Andhra Pradesh it prevails over the General law by virtue of Art. 254(2).

31. Learned counsel next referred to the definition of 'family' contained in S. 3 (1). Therein 'family' in relation to a person is stated to mean 'the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children.' So, Sri Poornaiah contended that a joint family, though it may satisfy the other requirements, does not get the benefit of the Act. In our opinion the definition of 'family' in relation to a person is deliberately included by the Legislature to give benefit to the different units of joint family which satisfy the requirements of the Act. When a debt is owed by a joint family it will have to be split up into different units as defined in cl (1) for the purpose of giving benefit under the Act. Otherwise there is no purpose in defining the 'family' by limiting its scope to an individual, the wife or husband and their unmarried minor children. Therefore, this definition clearly leads to the conclusion that when a debt is owed by a joint family, each unit thereof consisting of an individual, the wife or husband as the case may be of such individual and their unmarried minor children should be taken as debtor within the meaning of this Act in respect of each share of the debt owed by the family. Let us illustrate. Supposing there is a joint family consisting of five such units and possessing five hectares of wet land. As per the definition contained in S. 3 (1) read with the other provisions, it is logical to conclude that the family must be deemed to have been in five smaller units,

each having one hectare. Since each unit comes within the definition of. 'small farmer' as it owns only one hectare of wet land, then each of the five units gets the benefits of the Act.

32. A Division Bench of this Court consisting of Chinnappa Reddy and Chennakesav Reddy, J .J expressed the Same view in P Varahamma v. R Ramanna : AIR1979AP25 .

33. There is, however, one clarification which we want to make. If any one of these smaller units of the joint family has other lend which, taken along with We share which it would get out of the joint family properties, is more than the limit prescribed under S. 3 (t), then the unit would not get the benefit of the debt relief That is for the reason that that particular unit is not a 'small farmer' within the meaning of S 3 (t). This is the Logical corollary to the view we have expressed above.

34. For the reasons stated above, with the clarification just above mentioned, we dismiss all the wit petition but in the circumstances without costs. Advocates fee Rs.100/- in each case.

35. Sri Babulu Reddy and other learned counsel for the petitioners orally seek leave to prefer appeals to the Supreme Court. We have mainly relied on the decisions of the Supreme Court in deciding this matter. Therefore we see no substantial question of law which needs, to be further considered by the Supreme Court, which arises in this case. Consequently the requests are rejected.

36. Petition dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com