P. Krishna and ors. Vs. Government of A.P. and ors.

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Court : Andhra Pradesh

Decided On : Apr-09-2002

Reported in : 2002(3)ALD595

Judge : G. Bikshapathy, J.

Acts : Andhra Pradesh Land Reforms (Ceiling and Agricultural Holdings) Act, 1973 - Sections 14(4)

Appeal No. : WP No. 22339 of 1996

Appellant : P. Krishna and ors.

Respondent : Government of A.P. and ors.

Advocate for Def. : Adv. General for ;Government Pleader

Advocate for Pet/Ap. : P. Sri Raghuram, Adv.

Judgement :
ORDER

G. Bikshapathy, J.

1. The writ petition is filed challenging the proceedings issued by the 2nd respondent-Revenue Divisional Officer, Ranga .Reddy District in proceedings in D.No. 3084 of 1996, dated 12-9-1996 andalso the constitutional validity of

subsection 4(i) of Section 14 of A.P. Land Reforms (Ceiling on Agricultural Lands) Act, 1973.

2. It is the case of the petitioners that they belonging to Backward Class and Scheduled Caste and also they fall under landless poor category. Some of the petitioners are Freedom Fighters.

3. Certain persons, who filed their declarations under the provisions of the A.P. Land Reforms (Ceiling on Agricultural Lands) Act, 1973 (hereinafter referred to as the 'Act') were declared as surplus holders under the provisions of the said Act and it is open for the Government to allot the lands to the landless poor.

4. It is the case of the petitioners that the constitutional validity of the Act was upheld by the Full Bench in the case reported in Maddukuri Venkatarao v. the State of A.P., 1975 (II) An.WR 70, and subsequently, it was also confirmed by the Larger Bench. The petitioners submit that the lands which became surplus were required to be disposed of in accordance with the provisions contained in Section 14 of the Act and accordingly, the excess land was transferred to the petitioners, who fall within the beneficial protection of the said provisions. They were allotted 5 acres each of S.No. 101/ A/1 to the petitioners on payment of the value fixed by the Government. Subsequently, petitioners also paid the entire amount as fixed by the Government and final patta was issued in their favour on 27-10-1979 and some of the petitioners have reclaimed the land for agricultural purpose by spending huge amounts and some of the lands which were transferred were not fit for cultivation. In the meanwhile, the Miyapur was brought under the extended master plan thereby attracting the provisions of the Urban Land Ceiling Act and Regulation Act. Government issued G.O. Ms. No.733, dated 31-10-1988 bringing thesaid peripheral area of such villages. It is also stated that the said land was exempted from the Urban Land Ceiling Act. While the matter stood thus, the Joint Collector issued proceedings on 16-5-1982 cancelling the pattas granted to the petitioners under Section 166 (b) of Land Revenue Act. The same was challenged by the petitioners in Writ Petition No. 7845 of 1992 and 10704 of 1992. The learned single Judge by an Order dated 22-6-1994 allowed the writ petition and set aside the resumption Order. However, it is left open to the authorities to take

action under the Land Ceiling Act. Subsequently, the Revenue Divisional Officer-2nd respondent issued proceedings dated 26-7-1996 calling upon the petitioners to submit their objections and accordingly they submitted the objections and final orders were passed on 22-9-1996. The said order is assailed in this writ petition.

5. While the writ petition was pending, the 4th respondent, a Co-operative House Building Society was impleaded.

6. It is the case of the petitioners that the land was transferred in their favour on payment of value as assessed.

7. It is also their case that the petitioners are landless poor and eligible for the allotment or transfer of the agricultural lands under the provisions of the Act and the rules framed thereunder.

8. In September, 1979, transfer certificates were issued to them requiring them to pay the value of the land as assessed under Section 14(2) in 13 equal instalments. It is also their case that they have paid the entire amount. Some of the transferees have expired and the L.Rs are in possession of the land assigned, transferred in favour of the original transferees. After payment of the amount, the final patta certificates were issued to all the transferees. One of the conditions mentioned in the assignment are that the land shall be heritableand not alienable. The land assigned so shall be brought under direct cultivation three years from the date of granting final patta. The petitioners contend that they made every effort to bring the land under cultivation, but on account of the rockey terrain, some of the land have to be kept fallow as it was full of boulders and rocks. While so, show-cause notice was issued on 13-12-1990 by the Joint Collector, proposing to cancel the patta under Section 166(b) of the Land Revenue Act and thereafter final proceedings were issued on 16-5-1992 cancelling the patta. The same was challenged in Writ Petition No. 7845 of 1992. The said writ petition was allowed setting aside the cancellation order and however this Court observed that the quashing of the cancellation of the order would not bar the authorities to lake action under the A.P. Land Reforms (Ceiling and Agricultural Holdings) Act 1973. Thereafter, another show-cause notice was issued on 26-7-1996 to which they submitted explanation, but however, the orders were passed on 12-9-1996

cancelling the assignment made in favour of the petitioners.

9. It is the contention of the learned Counsel for the petitioners Mr. Raghuram that the very condition prohibiting the petitioners from alienating the land is contrary to the objectives of the Act. He further submits that this land is not a Government land, but it fell in the hands of the Government on account of the statutory provisions and therefore, the conditions as applicable to the assignment of Government lands cannot be made applicable to the lands which vested by virtue of the provisions of the Act. Moreover, he further submits that the Government was liable to pay the value for the surrender of surplus land as per Section 15 of the Act and the said amount was recovered from the petitioners by virtue of the provisions contained in Section 14(2) of the Act. Therefore, the question of imposing againa condition of non-transferability is illegal and arbitrary. Thus, the learned Counsel would submit that Section 14(4)(i) is unconstitutional and the same is liable to be struck off. He would further submits that the cancellation of the final patta granted to the petitioners after more than 1 1/2 decade is illegal and arbitrary and exercise of such power is not available. On this ground also, it is liable to bet set aside. The learned Counsel would also submit that the cultivation of lands became impracticable, by virtue of the extended Master Plan, the land is being developed through a Cooperative House Building Society and even otherwise, the purpose for which surplus land has to be utilised is not frustrated and it is being fulfilled. Therefore, the order is liable to be set aside.

10. On the other hand, the learned Government Pleader would submit that there is violation of the conditions of transfer inasmuch as, the petitioners failed to bring the land for cultivation within a period of three years from the date of the allotment. He would also submit that development agreement was entered for the conversion of the lands into non-agricultural purpose and there is a clear violation of the terms of the transfer. Hence, the cancellation order is legal and valid.

11. The learned Counsel appearing for the Co-operative House Building Society submitted that the Co-operative House Building Society was registered under the provisions of the Co-operative Societies Act and there are 203 members who have been allotted with the plots long back and most of the members have also paid the

substantial consideration. The learned Counsel would also submit that even under the provisions of the Act surplus land can be allotted even as housing plots. In the instant case, Co-operative House Building Society has purchased the land under Agreement of Sale. The HUDA has alsogranted Lay out and as per the approved Lay Out, plots, were allotted to various members, under those circumstances, the learned Counsel would submit that it is not transferees, who were severely effected, but the plot holders who are the members of the Co-operative House Building Society who arc seriously effected and therefore, he submits that their interest may be protected since they are innocent purchasers.

12. I have considered the respective contentions.

13. It is not in dispute in 1979, the pattas were granted and the action was initiated for the first time by the Joint Collector under Section 166-B in 1992. Subsequently, the cancellation orders were passed by the Joint Collector was set aside and thereafter the proceedings were initiated under the Land Ceiling Act and the final orders were passed in 1996. It is also cannot be disputed that the petitioners are entitled for the allotment under the provisions of the Act and the rules framed thereunder. Even though the learned Counsel for the petitioner Mr. Raghuram submits that when the amount has already been paid and which amount ought to be paid by the Government under Section 15, the question of still subsisting ownership with the Government would not arise and such a action is arbitrary, I am not persuaded to appreciate this contention. The terms and conditions of the transfer are such that it is not alienable, but heritable and that it cannot be that such a conditions cannot be imposed.

14. But, the principal question that calls for consideration is whether the Government is empowered to cancel the patta after a lapse of nearly 15 years. Even assuming that they have violated the terms and conditions of grant of patta, yet, can it be said for them to cancel after such a long lapse of time and more especially in somecases the original allottees died and L.Rs are in possession of the lands. In similar identical case falling under Section 32 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, the Supreme Court in Ponnala Nursing Rao v. Nallollu Pantaiah, : (1998)9SCC183 , observed that an application

under Section 32 of the Act for restoration of the possession by protected tenant has to be moved within a reasonable time. It observed in para 3 as follows:

'So far as the second contention is concerned, it is true that though no express period of limitation is provided for tiling application under Section 32 of the Act, such applications have to be moved within reasonable time. It may be because of such belated applications, the other side may stand adversely affected. It may have changed its position in the meantime. Equities may have arisen in his favour, he may have spent large amounts on land by improving it. But all these questions have to he pleaded and proved. Surprisingly, no such contention was ever canvassed much less tried to be proved on any equitable ground by the petitioner. Therefore, this second contention on the facts of the present case cannot be sustained, It has also to be noted that no plea of adverse possession was put forward by the petitioner in support of his case.'

15. Therefore, initiating the proceedings for cancellation of patta after nature of the land was substantially changed and the interest was transferred to the members of the Co-operative House Building Society, who in turn spent huge amounts for the development of the land as per the Lay out approved by the HUDA., it would definitely cause irreparable loss to the Co-operative House Building Society and its members. Under Section 14, the land which vested with the Government under the Act shall be allotted for use for house sites, for agricultural labour, village artisans or other poorer persons owning no housesor house-sites or it can be transferred to the weaker sections of the people, who are dependants on agriculture. Section 14 reads Ihus:

'14. Disposal of land vented in Government :--(1) The lands vested in the Government under this Act shall be allotted for use as house-sites for agricultural labourers, village artisans or other poor persons owning no houses or house-sites, or transferred to the weaker sections of the people dependent on agriculture for agriculture or for purposes ancillary thereto, in such manner as may be prescribed:

Provided that, as far as may be practicable, not less than one half of the total extent of land so allotted or transferred shall be allotted or transferred to the members of the Scheduled Castes and the Scheduled Tribes and out of the balance, not less than two-third shall be allotted or transferred to the members of the backward class, classes of citizens notified by the Government for purposes of Clause (4) of Article 14 of the Constitution.

(2) Every person, to whom the land has been allotted for use as house-site or transferred for the purpose of agriculture or for purposes ancillary thereto, shall pay to the Government within a period of fifteen years from the date of allotment or transfer or within a shorter period at his option, and in such instalments as may be prescribed, a sum calculated at fifty times the land revenue payable on such land, subject to a maximum of Rs.1,250/-per hectare in the case of wet land and Rs.375/- per hectare in the case of diy land and on payment of the entire amount such person shall be granted a patta in respect of the that land.

Explanation :--Where any land transferred under this sub-section contains any fruit-bearing trees or permanent structures, the transferee shall also be liable to pay the value of such n-ecs or structures calculated in such manner as may be prescribed.

(3) Where any person fails to pay the sum referred to in Sub-section (2) or anyinstalment thereof the Revenue Divisional Officer may, subject to such rules as may be prescribed, resume the land after giving an opportunity to the person concerned of making a representation in this behalf and the amount already paid by such person to the Government shall be liable to be forfeited to the Government.

(4) Any transfer of the land under this section shall be subject to:

(i) the condition that the land shall not be alienated by the transferee by way of sale, gift, mortgage, lease or in any manner whatsoever otherwise than by way of mortgage in favour of the Government, a bank or a Co-operative Society including a land mortgage bank; and

(ii) the condition that where the land transferred is an orchard, the transferee shall continue to maintain such land as an orchard; and

(iii) such other condition as may be prescribed.

(5) Any alienation effected or other act done in respect of any land in violation of the conditions specified in Sub-section (4) shall be null and void, and the Revenue Divisional Officer shall resume the land after giving an opportunity to the persons affected of making a representation in this behalf.

(6) Notwithstanding anything in this section, the Government may:

(i) lease out any land vesting in them under this Act for such purposes and on terms and conditions as may be specified by them; or

(ii) reserve such land for any common use or benefit of the community.'

16. As can be seen from the events, the entire scenario of the land has been changed and at this point of time giving show-cause notice that the land was not cultivated within three years becomes insignificant. In fact, when there was a violation of such condition, the authoritiesought to have taken immediate steps within a reasonable time. But, when the nature of the land and the utility of the land has been completely changed and it was converted into house plots by Co-operative House Building Society for allotment to the members, who did not own any plots, the matter has to be viewed in a different angle. Even assuming the land was not cultivated within three years from the date of the grant of patta i.e., by 1982, yet, taking action for cancellation of patta would not ensure to the benefit of the Government and in view of the fact that 203 members have already been allotted with the plots by virtue of the Lay out granted by the HUDA these persons will be thrown out of the land purchased by them, by spending their hard earned money.

17. Under these circumstances, the situation cannot be allowed to be deteriorated further and it has to be salvaged to the benefit of the poorer sections keeping the objects contained in Section 14 of the Act. Section 14 permits allotment of house-sites to the persons who are owning no houses or house-sites. In the instant case, it is not in dispute that the Co-operative House Building Society has acquired this land and it is also allotted to the members, but however, the documents relating to transfer of title have not been executed for the reason stated supra.

18. Under these circumstances, this Court feels that the land should be allowed to be retained by the 4m respondent-Cooperative House Building Society for allotment to the members which would serve the purpose as contained in Sub-section (1) of Section 14. But, however, the Society cannot be allowed to have the advantage of the land without payment of the cost. Even though the original allottees have already paid the necessary amounts, but yet, it is incumbent on the part of the 4th respondent to pay the value of the land.

19. Under these circumstances, while denying the relief to the petitioners and keeping in view the changed circumstances of the situation, the writ petition is disposed of with the following directions:

(1) The land allotted to the petitioners shall be treated as if it is transferred to the 4th respondent-Co-operative House Building Society for transfer of house-sites to its members.

(2) Since the Lay Out has already been approved by the HUDA which conforms to the requirements of the Lay Out Rules, the development cannot also be said to be contrary to the Master Plan. As the cost of the land is increased, even though the rate that is payable by the Government to the surplus land holders is very meagre, instead of directing the authorities to fix the appropriate value other than valuation made under Section 14. this Court feels it is reasonable that the Society should pay a sum of Rs. 30,000/- per acre, which is allotted under Section 14(2), the value would be Rs. 190/- per acre,

(3) The 4th respondent-Co-operative House Building Society shall deposit the amount at the above rate for the entire extent of Ac.42-25 gts within a period of three months from the date of receipt of a copy of this order. On receipt of such amount, the respondents shall assign the land in favour of the 4th respondent-Cooperative House Building Society for allotment to its members in accordance with the bye-laws of the Society.

20. The writ petition is disposed of accordingly. No costs.