

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT APPEAL Nos.471, 472 and 475 OF 2013

W.A.No.471 of 2013

Between:

- # 1. B. Laxmi (died) per
2. B. Bikshapathi, S/o. late B. Mallaiah,
Aged 53 years, Occ: BHEL Employee,
R/o.H.No.21-83, Venkatapuram, Post: Tirumalgiri,
Secunderabad and others (died) per L.Rs.
Appellant Nos.7 and 8 .. Appellants

And

1. Government of Andhra Pradesh, rep.,
By its Principal Secretary to Revenue,
Secretariat, Hyderabad and others
.. Respondents

Date of Order Pronounced: **12.12.2023**

SUBMITTED FOR APPROVAL:

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | (Yes/No) |
| 2. | Whether the copies of judgment may be marked to Law Reports/Journals? | (Yes/No) |
| 3. | Whether their Lordship/ Ladyship wish to see the fair copy of the Judgment? | (Yes/No) |

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

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% Dated 12.12.2023

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Aged 53 years, Occ: BHEL Employee,
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2. Government of Andhra Pradesh, rep.,
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! Counsel for Appellants : Mr. Madan Mohan Rao,
Senior Counsel rep.,
Mr. G. Dhananjai, counsel for the
appellants

^ Counsel for respondents : 1. Mr. B. Venkata Rama Rao,
counsel for respondent No.8
in W.A.No.471 of 2013; and
for respondent Nos.17, 19, 25
27 and 30 in W.A.No.472 of
2013 and for respondent
Nos.1 to 6 in W.A.No.475 of
2013
2. Mr. A.P. Reddy, counsel for
respondent No.53

<GIST:

> HEAD NOTE:

? Cases referred

1. 2023 (1) ALD 83 (TS) (FB)
2. 2003 (6) ALD 75
3. 1977 (107) ITR 702
4. 2014 (9) SCC 657

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT APPEAL Nos.471, 472 and 475 OF 2013

COMMON JUDGMENT: *(per the Hon'ble Shri Justice Anil Kumar Jukanti)*

These three intra court appeals are filed against the common order dated 28.01.2013, passed by learned Single Judge in Writ Petition Nos.26578 and 25790 of 2003 and 27777 of 2009. Writ Appeal No.471 of 2013 is filed against the order passed in W.P.No.26578 of 2003, whereas in Writ Appeal No.475 of 2013 the order passed in W.P.No.25790 of 2003 has been challenged. In Writ Appeal No.472 of 2013 the order passed in W.P.No.27777 of 2009 is under challenge.

2. Heard Mr. Madan Mohan Rao, learned Senior Counsel representing Mr. G.Dhananjai, counsel for the appellants and Mr. B.Venkata Rama Rao, counsel for respondent No.8 in W.A.No.471 of 2013 and for respondent Nos.17, 19, 25, 27 and 30 in W.A.No.472 of 2013 and for respondent Nos.1 to 6 in

W.A.No.475 of 2013. Mr. A.P.Reddy, learned counsel for respondent No.53 in W.A.No.472 of 2013.

3. Since the issue involved in all the three Writ Appeals is one and the same, they are heard together and are being disposed of by this common judgment. For the facility of reference, the facts from W.A.No.472 of 2013 are being referred to.

4.1 One Mr. Khaja Jalal Sab was inamdar of land in respect of land measuring Acs.21.26 guntas of old Survey No.290. On account of resurvey, the same was assigned as new Survey No.391 measuring Acs.16.35 guntas at Alwal Village classified as pan maqta. Upon his demise, vide mutation proceedings, dated 28.09.1968, the names of legal heirs of Mr. Khaja Jalal Sab viz., Mr. Khaja Mohinuddin and others appear in the revenue records as inamdars/pattedars. Shri Baikani Mallaih, Shri Nimmana Guruva Reddy, Shri Yeruva Chandra Reddy, Shri Dasaram Chandra Reddy and Shri Pathri Pochaiah were the tenants/possessors of inamdars of the said land. The

inamdars sold land measuring Acs.10.00 guntas to one Shri Nimmana Guruva Reddy, Shri Baikani Mallaiah & 3 others vide unregistered sale deed in the year 1970. The tenants/possessors executed a registered agreement of sale in the year 1980 in favour of Shri Yadagiri and Smt. Alladi Saraswathi to an extent of Ac.7.19 guntas which is their share after earmarking an extent of Ac.5.00 guntas out of Ac.12.19 guntas in Survey No.391 to the inamdars.

4.2 Thereafter, the inamdars executed General Power of Attorney in favour of Shri Yadaiah and Smt. Alladi Saraswathi to an extent of land of Ac12.19 guntas in the year 1980. In the year 1981, Shri Baikani Mallaiah and others executed General Power of Attorney in favour of Shri V.Damodar Reedy to an extent of Ac.9.13 guntas. The GPA holders have executed registered sale deeds in favour of different plot holders after making layouts.

4.3 After death of Shri Baikani Mallaiah, his legal representatives filed an application before the Revenue

Divisional Officer (hereinafter referred to as 'Primary Authority') seeking Occupancy Rights Certificate (hereinafter referred to as 'ORC') in respect of land measuring Acs.16.35 guntas. The RDO has granted ORC to legal representatives of Shri Baikani Mallaiah for an extent of Ac.1.30 guntas. The ORC was issued in respect of land measuring Ac.18 guntas and Acs.5.20 guntas in favour of Shri Agam Reddy, Shri Yadagiri and Shri Damodar Reddy respectively. Aggrieved by the orders of RDO, an appeal was preferred before the Joint Collector, Ranga Reddy District i.e., Appellate Authority. The Appellate Authority by an order, dated 15.11.2003, in case No.F1/7992/1996 dismissed the appeal and set aside the ORC issued by the RDO and declared that none of the claimants are in possession of the said land and the land vests with the State. The Appellate Authority further directed the MRO to take possession of the land. The appellants have filed Writ Petition Nos.25790 and 26798 of 2003 challenging the order of the Appellate Authority.

4.4 The Government of Andhra Pradesh came up with a policy viz. "The Andhra Pradesh transfer of rights to certain specified categories of occupants of unassigned Government lands policy 2008". The said policy was notified vide G.O.Ms.No.166 Revenue (Ass. POT) Department, dated 16.02.2008. A comprehensive set of guidelines were issued vide the G.O. As per the said policy the government intended to transfer small extent of lands and regularize the same, for certain specified categories of occupants of unassigned Government lands in the context of longstanding occupation by members of weaker sections, slum dwellers, low and middle income group people, etc. by way of structures or otherwise. By following the said policy guidelines, the authorities transferred and assigned ownership rights through Conveyance Deeds for the said categories of individuals.

4.5 After enquiry through enquiry teams, the Tahsildar, Malkajgiri Mandal submitted proposals for transfer of rights in respect of such categories of persons/individuals who were in longstanding occupation of government lands. The said

proposals were scrutinized and approved by District Level Committee at Chief Commissioner of Land Administration for transfer of rights for smaller extent to the members by fixing a market value to be borne by the alienee (i.e., members of weaker sections, slum dwellers, low and middle income group people etc.). After remittance of the fixed amount in the treasury for the cost of the land, the smaller extents of the land(s) stood transferred and regularized in terms of G.O.Ms.No.166 Revenue (Ass. POT) Department, dated 16.02.2008.

4.6 These Conveyance Deeds and the regularization of smaller extents of land in Survey No.391/A were challenged by the Appellants in W.P.No.27777 of 2009.

4.7 For the sake of clarity, the reliefs in three Writ Petitions are extracted below:

Writ Petition No.26578 of 2003 was filed for the following relief:

“...Hon’ble Court may be pleased to issue order or direction or writ more particularly one in the nature of Mandamus declaring the orders passed by the Respondent No.2 herein dated 15.11.2003 in the Case No.F1/7992/96 as illegal, arbitrary and contrary to the provisions of the AP (Telangana Area) Inams Abolition Act and set aside the same and consequently direct the respondents to grant the Occupancy Rights Certificate in favour of the petitioners in respect of the lands in survey No.391/A admeasuring 16 acres 35 guntas situated at Alwal Village, Malkajigiri Mandal, Ranga Reddy District, in the interest of Justice and pass such other order or orders..”

W.P.No.25790 of 2003 came to be filed for the following

relief:

“...Hon’ble Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus (i) declaring the order of the Respondent No.1 in proceedings No.F1/7992/1996 dated 15.11.2003 as arbitrary, illegal, violative of Article 14, 21 and 300-A of Constitution of India and consequently set aside the same (ii) declaring the order of the respondent No.2 in proceedings No.2/L/429194 dated 30.12.1995 granting Occupancy Rights Certificate in favour of Respondent Nos.4 to 9 to an extent of Ac.1.30 guntas and to respondent No.10 to an extent of Ac.0.18 guntas as arbitrary and illegal; (iii) pass such orders...”

Writ Petition bearing W.P.No.27777 of 2009 was filed for the following:

“...Hon’ble Court may be pleased to issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of respondent No.5 representing the 1st respondent in executing the Conveyance Deeds as mentioned in the Schedule enclosed to this affidavit in support of Writ Petition, in respect of Sy.No.391/A, situated at Kanajiguda Village, Alwal of Malkajgiri Mandal, Ranga Reddy District in favour of respondent Nos.10 to 39 as illegal, arbitrary and against the rights guaranteed under Article 300A of the Constitution of India, by holding that the said Conveyance Deeds are non-est in Law and null and void and not valid and not binding on the petitioners and to pass such other order or orders...”

4.8 The learned Single Judge decided all the three Writ Petitions, but, however passed an order holding that the claim for regularization of the land in terms of G.O.Ms.No.166 Revenue (Assignment) dated 16.03.2008 as justified.

5. The learned Senior Counsel appearing on behalf of the appellants submitted that in W.A.No.472 of 2013, the *lis* before the Appellate Authority was whether the order passed by the

Primary Authority is legal or valid and the Appellate Authority travelled beyond the scope in holding that the land belongs to Government and that the order is not a speaking order and no opportunity was granted and should have remanded the matter to the RDO.

5.1 Attention of this Court has been invited to the order of Appellate Authority to buttress the contention that the Appellate Authority has erred and travelled beyond the scope. It is submitted that the Appellate Authority has observed that the land is fallow (Padava) at one place and as grazing land at another place. It is further contended that the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (herein after referred to as “the Act, 1955”) does not define “agricultural land” and submitted that in Andhra Pradesh (Telangana Area) Tenancy and Agricultural lands Act, 1950, the definition for “agricultural land” under Section 2(c) has to be considered, which is as follows:

“Agricultural land means land which is used or is capable of being used for agriculture or reserved for growing forests and includes:

i. Fallow land...”

It is contended that the test to determine the land as agricultural land is whether land is used or capable of being used for agriculture.

5.2 It is further contended that the Appellate Authority has held the land to be fallow (padava) and hence, the same is an agricultural land and the appellants are entitled for grant of ORC as they are in occupation, possession and enjoyment. Reliance is placed on the judgment rendered by a full Bench of this Court in the case of ***Executive Officer, Group of Temples, Wanaparthi, Mahabubnagar District v. Joint Collector, Mahabubnagar and others***¹ and it has been submitted that the appellants are successors in interest and have been in continuous occupation, possession and enjoyment and are entitled for grant of ORC. Reliance is also

¹ 2023 (1) ALD 83 (TS) (FB)

placed on the judgment in the case of ***Venkata Reddi v. Commissioner of land reforms and urban land ceilings and Appellate Authority, Hyderabad and another***² wherein it was held that land which is used or is capable of being used for agriculture is agricultural land and it includes fallow land.

5.3 It is contended that Sections 2(o) and 2(q) of the Urban Land (Ceiling and Regulation) Act, 1976 defines “urban land” and “vacant land” and for the purposes of Sections 2(o) and 2(q), Agriculture is defined as including horticulture but does not include “raising of grass”. Relying on the definitions, an attempt has been made to counter the observation made by the Appellate Authority in the order that “ORC cannot be granted for grazing lands”. Further reliance is placed on the judgment rendered in the case of ***Commissioner of Income Tax v. Krishna Mining Company***³ to buttress the contention that the Appellate Authority has travelled beyond the scope.

² 2003 (6) ALD 75

³ 1977 (107) ITR 702

5.4 We find no force in the contentions. The Appellate Authority had held that persons falling within the ambit of Sections 4-8 of the Act, 1955 do not have any right to sell the lands and execute sale deeds under the Act, 1955 as they do not have any right, title or interest on the lands. The Appellate Authority, after verification of records, held that the original pahani for the year 1973-74 was tampered. This Court in a Letters Patent Appeal will not venture on a fact finding mission. The learned Single Judge, while upholding the Appellate Authority's order, has declined to interfere under the extraordinary jurisdiction conferred under Article 226 of the Constitution of India. We subscribe to the view taken by the learned Single Judge.

5.5 It is submitted that the learned Single Judge erred in holding that there is no flaw in the order passed by the Appellate Authority and that the Tahsildar is not empowered to alienate the land and it is only the Collector who is empowered. It is further contended that the learned Single Judge has not appreciated the fact of possession of the appellants' father from

1951 and that after his demise, the appellants are in possession. It is submitted that the learned Single Judge erred in holding that the Government is justified in regularizing the possession of purchasers pursuant to G.O.Ms.No.166, Revenue (Ass. POT) Department, dated 16.02.2008.

6. It is submitted by the learned counsel for the unofficial respondents that the learned Single Judge declined to interfere with the order of the Appellate Authority as the order does not suffer from any infirmity.

6.1 It is submitted that the persons who have purchased the lands will acquire a status superior to that of the tenant and as such they are disentitled to claim ORC. It is submitted that in the judgment rendered by a full Bench of this Court, it has been held that purchaser of land from inamdar is not a successor in interest and cannot apply for ORC. It is further submitted that while granting ORCs, the authorities have to consider whether the individuals/persons qualify to make an application.

6.2 It is also submitted that the applicant has to be in personal cultivation of the land for grant of ORC and that a distinction has to be made between the nature of agricultural land and right over the land. It is submitted that the Act, 1955 intends to grant occupancy rights to 5 categories of persons covered by Sections 4 to 8 of the Act, 1955. Our attention is invited to Sections 2(b), 2(d), 2(f), 2(g), 9(1) and 9(3) of the Act, 1955 and contended that the appellants are not entitled for grant of ORC and that regularization of plots is valid as per G.O.Ms.No.166, Revenue (Ass. POT) Department, dated 16.02.2008. It is contended that by virtue of Section 3 (1) of the Act, 1955, all inam lands came to be vested in the State Government.

6.3 Reliance is placed on a judgment rendered by the Hon'ble Apex Court in the case of **Bangalore Turf Club Limited v. Regional Director, State Employees Insurance Corporation⁴** and contended that meaning to the words in the statute should be understood in the context and objects of the

⁴ 2014 (9) SCC 657

legislature must be taken into consideration. Learned counsel contended that as per the full Bench Judgment of this Court, purchasers are not entitled for grant of ORC and appellants are not successors in interest.

6.4 It is submitted that respondents No.10 to 39 have purchased plots of varying sizes from the GPA holders i.e., Shri Yadaiah and Shri Damodar Reddy and from certain other persons in the years 1994-2002 and it is these unofficial respondents whose plots have been regularized vide policy viz. “The Andhra Pradesh transfer of rights to certain specified categories of occupants of unassigned Government lands policy 2008” notified vide G.O.Ms.No.166, Revenue (Ass. POT) Department, dated 16.02.2008.

6.5 It is also contended that a Division Bench of this Court in the case of **M.Ramender Reddy** (1 supra) has held that the persons who are not in actual possession and enjoyment (by way of cultivation) as on the date i.e., 01.11.1973 are not entitled for ORC and the same has been upheld by a full Bench

of this Court. Further submitted that there is no possibility of agriculture being carried out in the said land in the year 1973-74 as residential structures have come up.

7. The learned counsel appearing for respondent No.53 has contended that the appellants/purchasers have taken dual stand of being purchasers and tenants, which is not tenable. It was also contended that the pahani for the year 1973-74 has been tampered and the grant of ORC to the extent of Ac.1.30 guntas is not valid and the Appellate Authority has rightly reversed the order of RDO which was upheld by the learned Single Judge and the order of the learned Single Judge needs no interference. It is further contended that when the land is said to be fallow/padava, it means that the land is not put to personal cultivation as on 01.11.1973. It is submitted that as on the date of 01.11.1973, the individuals/persons have to be in possession and should have been personally cultivating the said land for grant of ORC.

8. Heard the learned counsels for the parties and perused the record.

8.1 Inams in the Telangana Area have been abolished and vested in the State as per the Act, 1955 w.e.f. 20.07.1955, but the relevant date for the determination of rights of the occupants, who are in personal cultivation on the Inam lands, is 01.11.1973. It is on this date, either the inamdar or the categories of persons under the Act, 1955, if are in possession of land, would be entitled to seek grant of occupancy rights.

8.2 The learned Single Judge has not upset the Appellate Authority's finding that the original pahani for the year 1973-74 has been tampered. We have perused the order of Appellate Authority. The categorical finding has been arrived at by the said authority only after verifying the original pahani of the year 1973-74. The authority has further held that the cultivation extent has been added subsequently with slight change of ink and that the script is different from the rest of the pages. The finding that the RDO has not verified the

Sethwar and relevant pahani for the year 1973-74 is crucial. The findings of the Appellate Authority have been upheld by the learned Single Judge. The learned Single Judge has rightly concluded that there is no valid ground for disturbing the findings, on the said factual aspect of tampering of revenue record.

8.3 We have perused the policy viz. "The Andhra Pradesh transfer of rights to certain specified categories of occupants of unassigned Government lands policy 2008". The said policy was notified vide G.O.Ms.No.166, Revenue (Ass. POT) Department, dated 16.02.2008. A comprehensive set of guidelines were issued vide the G.O. As per the said policy the Government intended to transfer small extents of land(s) and regularize, for certain specified categories of occupants of unassigned Government lands in the context of longstanding occupation by members of weaker sections, slum dwellers, low and middle income group people, etc. by way of structures or otherwise. The Conveyance Deeds and the registration of the small extents of land(s) to the respondents have been carried

out following the guidelines issued by the Government. The learned Single Judge has rightly held that the Government is justified in regularizing the possession of purchasers pursuant to G.O.Ms.No.166, Revenue (Ass. POT) Department, dated 16.02.2008 and has rightly dismissed the Writ Petition. We see no grounds for interference of the order of the learned Single Judge.

8.4 A reading of the provisions of Act, 1955, Sections 4 to 8 indicates the persons who are entitled for grant of ORC. For the purpose of grant of ORC, relevant date is 01.11.1973 as held by a catena of decisions of this Court and confirmed by the Hon'ble Supreme Court. The indispensable requirement namely the actual possession of land and personal cultivation is a *sine quo non* for grant of ORC as on 01.11.1973. This requirement has to be met by verification of the relevant records by the authority and also taking into consideration the documentary evidence relied upon by the applicants/claimants. In the present case, the finding by the Appellate Authority is that the pahani for the year 1973-74 is

tampered, which is crucial. The Appellate Authority has rightly negated the claims. The learned Single Judge has declined to interfere with the order of the Appellate Authority. The findings of the fact record by the Appellate Authority as well as learned Single Judge are based on meticulous appreciation of evidence on record. The findings do not suffer from any infirmity warranting interference in these appeals.

9. This Court does not perceive any merit in these appeals and accordingly, the same are dismissed.

Miscellaneous applications pending, if any in these Writ Appeals, shall stand closed.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

Date:12.12.2023
KRR

Note: L.R. Copy be marked.
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THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

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