

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.779 of 2005

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Dated:30.11.2005

ORDER:

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This writ petition is filed challenging the constitutional validity of the explanation under Section 3(i) of the A.P.Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Act') as arbitrary and unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India and second proviso of Article 31-A of the Constitution of India and for alternative relief directing the respondents to exclude the lands admeasuring Acs.7.54 comprised in Survey Nos.465, 442/3, 442/1, 467/3, 467/4 and 442/2 of Movva Village, Divi Taluq, Krishna District, from the holding of the declarant.

The petitioner herein filed a declaration being LCC No.1161/KKI/75 before the Land Reforms Tribunal, Gudiwada (hereafter called "the Tribunal") under the provisions of the Act. By order dated 12.08.1977, the Tribunal determined the petitioner to be surplus holder to the extent of 1.6755 Standard Holdings (SH). The petitioner, therefore, filed appeal being LRA No.1768 of 1977 on the file of the Land Reforms Appellate Tribunal, Krishna (hereafter called "the Appellate Tribunal"). There was a cross appeal by the Authorized Officer. By common order dated 30.03.1979, the Appellate Tribunal determined the holding of the petitioner as 0.4794 SH surplus holding. The appeal filed by the Authorized Officer was dismissed. Again the petitioner preferred a revision petition being CRP No.3256 of 1979. This Court allowed the matter and remanded to the Tribunal to determine the extent covered by the lease in the occupation of the lessee afresh. The Tribunal accepted the evidence of R.Ws 2 to 4 and Exs.X.1 to X.7 and gave a finding that the petitioner establish lease but refused to exclude the leased land from the holding of the petitioner. The petitioner again filed an appeal before the Appellate Tribunal being LRA No.33 of 1983, which was dismissed on 07.12.1983. The petitioner's revision being CRP No.975 of 1984 was dismissed and the petitioner was also unsuccessful in SLP No.12927 of 1987 as the Supreme Court dismissed the same on 01.12.1994.

In December 2004 the respondents came to the petitioner's land and fixed flags to an extent of 0.4794 SH for taking possession. The petitioner, therefore, filed the present writ petition contending that the land in question had been in possession of the tenants since 1969 by a reason of the lease dated 24.01.1971 prior to coming into force of the Act and therefore, the same is not covered by the Act. Further the

case of the petitioner is that when the Act itself is not applicable to the petitioner's land under lease, the question of including in the petitioner's holding does not arise, and therefore, the orders passed by the authorities under the Act are without jurisdiction. It is also the contention of the petitioner that the explanation to Section 3(i) of the Act renders the provision unworkable and arbitrary.

The petitioner has availed all the remedies under the provisions of the Act up to High Court twice. The final orders passed by this Court have become final by reason of the dismissal of the SLP filed by the petitioner. Further, it is brought to the notice of this Court by the learned Assistant Government Pleader for Revenue that a Full Bench of this Court in **M.Venkata Rao v. State of Andhra Pradesh** has upheld the Act and that the Supreme Court in **T.Venkaiah v. State of A.P.** upheld the validity of the Act, and therefore, the same question cannot be raised. It is also submitted by the learned Assistant Government Pleader that when the proceedings under the Act have become final, the same cannot be reopened in this writ petition.

In a recent unreported judgment of this Court in W.P.No.24720 of 2005, dated 25.11.2005, I have considered the similar question. It was also the case where the proceedings under the Act became final, but still the petitioner chose to challenge the explanation under Section 3(i) of the Act so as to exclude the land from the holding. The reasons recorded therein while dismissing the writ petition the writ petition are squarely covered in this writ petition also.

Following the judgment in W.P.No.24270 of 2005, this Writ Petition is also dismissed. No costs.

(V.V.S.RAO, J)

30.11.2005

vs