

(1957) 04 AP CK 0009

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 508/4 of 1955

A. Sitaram Reddy

APPELLANT

Vs

Kumari Chilka Mallaiah

RESPONDENT

Date of Decision : 17-04-1957

Acts Referred:

Hyderabad Tenancy and Agricultural Lands Act, 1950 — Section 19, 19(2), 28

Citation : AIR 1957 AP 774 : (1957) 2 AnWR 395

Hon'ble Judges : Kumarayya, J

Bench : Single Bench

Advocate : Devi Pershad Misra, Lakshman Rao and Rama Reddi, for the Appellant; Abul Khair Siddiqui, for the Respondent

Final Decision : Allowed

Judgement

Kumarayya, J.—This is a revision petition u/s 19 of the Hyderabad Tenancy and Agricultural Lands of 1950) against the order of the Collector, Hyderabad. The Petitioner Sitaram Reddy applied to the Tahsildar Medical for termination of the tenancy of Kumarichelka Mallayya and Kumarichelka Balayya, the Respondents u/s 19 (2) (a) (i) of the said Act on the ground that they did not pay to him the rents of the land bearing S. No. 302 for the years 1950 to 1953. The Respondents resisted this petition on the ground that they are- the tenants of Jeelani Begum the pattedaran, for the last 20 years and more and not of the applicant who has no interest in the land. They however admitted that they did not pay rent to anybody ever since the police action as there was no demand made from them since that time. The Tahsildar came to the conclusion that the applicant being the purchaser of the land hi question from Jeelani Begum, was the owner of the suit land; that his name was not yet entered as pattedar in the register concerned but that it does appear as such in the tenancy register of 195.0 wherein the Respondents are shown as kowldars. He found that the Respondents were the tenants of the Petitioner, and had failed to pay to him the rent for about four years and that their tenancy therefore must be terminated.

He not only declared the termination of the tenancy but also ordered their eviction from the land in question, though that was not the relief sought for in the application filed. The Collector in appeal did not agree with the view of the Tahsildar that the Petitioner is a pattedar, for his name as such is neither entered in Jamabandi papers nor has he satisfied him that he ever paid land revenue as pattedar of the suit land. He therefore came to the conclusion that Petitioner's claim was untenable. Thus he allowed the appeal and set aside the order passed by the Tahsildar.

2. The order of the Collector is challenged now on the ground that a landholder not necessarily a pattedar is entitled in law to the relief claimed. The Petitioner having acquired all the proprietary rights including the right of pattadari from Jeelani Begum under a registered sale deed and having obtained a decree from the civil court on the basis thereof and further having got the orders from the Tahsil for mutation in the year 1951 is indeed a landholder for the purposes of Act XXI of 1950 and as such is entitled to terminate the tenancy of the defaulting tenants. I agree with the contention that a landholder need not be a pattedar for it is well settled that patta is a specific right which can exist independent of right of possession. I also agree that the approach of the Collector to the problem in question is not quite correct. But mere correctness or otherwise, of the order passed cannot be a matter to be urged before this Court. The jurisdiction of this Court being revisional is limited to questions of want of jurisdiction or non-exercise of jurisdiction or to the fact that the original or appellate authority acted illegally or with material irregularity in following the procedure or passing the order. In my opinion, the case involves also the question of material irregularity both in adopting the procedure and in passing the order. The Petitioner in his original petition filed before the Tahsildar did not apply for eviction of the tenant u/s 28 and his prayer was restricted to the termination of the tenancy with specific mention of Section 19 (2) (a)(i). Section 19 (2) (a) (i) reads with its proviso as below:

The landholder may terminate a tenancy on the ground that the tenant (i) has failed to pay in any year within fifteen days from the day fixed under the Land Revenue Act for the payment of the last installment of land revenue due for the land concerned in that year, the rent of such land for that year.

Provided that no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this Sub-section unless the landholder gives six months' notice in writing intimating his decision to terminate the tenancy and the grounds for such termination.

It does not appear from the record that any notice contemplated by this section was given to the tenants. Assuming that the Petitioner had acquired full rights from Jeelani Begum whose tenants were the Respondents he should have intimated to them the transfer of rights. Unless the tenants were aware of the proprietary interest of the Petitioner or that they had become his tenants there can be no question of defaults of payment to him. The protected tenancy

certificate awarded does not show that the Petitioner is their landlord or the holder of certificate is his tenant. Thus it ought to have been proved that the Petitioner was the landholder to the knowledge of the tenants. Besides, if no statutory notice was given to them, there could be no occasion for termination of tenancy. The original authority does not appear to have considered the case from this point of view. At any rate, it does not appear that there was full compliance with the provisions of Section 19 (2). Unless termination of tenancy in the prescribed manner is established an action u/s 28 for ejectment of the (tenant) unwarranted by law. The language of Section 28 quite clear in this behalf. Both the original and appellate authority failed to take this aspect of law into consideration. The original authority did not take into account that there was no petition for eviction u/s 28, that even for termination of tenancy the provisions of Section 19 are to be fully complied with and that no eviction could be ordered without the tenancy being terminated according to law. The appellate authority too did not bear in mind this aspect of law while passing the order _ in appeal. I therefore allow this revision on, set aside the orders of the original and appellate authority and remand the case to the Tahsildar for further enquiry and disposal according to law having regard to above observations. No costs will abide the result of the proceedings.