

(1995) 10 AP CK 0038

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 205 of 1987

B. Naga Reddy (died) and Others

APPELLANT

Vs

Mattam Parvataiah (died) and Others

RESPONDENT

Date of Decision : 18-10-1995

Acts Referred:

Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 — Section 1(3), 3, 3(2), 33, 4

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 38(6)

Citation : (1996) 1 ALT 325

Hon'ble Judges : M.N. Rao, J; B. Sri Atchutananda Swamy, J

Bench : Division Bench

Advocate : Y. Sivarama Sastri, for the Appellant; Mahipathi Rao, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Rao, J.—This Letters Patent Appeal is from the Judgment of a Learned Single Judge of this Court in A.S. No. 769 of 1978 (see: M. Parvathaiah v. B.N. Reddy, 1987 (2) ALT 597 allowing in part the appeal of the plaintiffs - protected tenants and granting declaration of their title in respect of the plaint schedule property and possession thereof with a further direction for enquiry into profits from the year 1969-70. The suit was laid by the respondents-plaintiffs seeking declaration of title in respect of the plaint schedule property, recovery of possession, declaration of their right to irrigate the lands with water from the two sources named therein, a consequential permanent injunction restraining the defendants from causing obstruction to the enjoyment of the irrigation channels of the two sources of irrigation in respect of the suit lands, a mandatory injunction to restore the irrigation channel that was destroyed by the defendants and to restore to its original condition and for recovery of profits both past and future.

2. In the plaint, it was averred that the plaintiffs are brothers and protected

tenants in respect of the plaint schedule property which formed part of a larger extent of Ac. 62-03 guntas and that defendant No. 1, who was the owner of the property agreed to sell the same to them and after he received the sale consideration, the authorities under the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short "the Tenancy Act") issued sale certificates u/s 38(6) of the Tenancy Act dt.31-9-1961 but in the month of March, 1968, defendants 1 to 3, with the help of the other defendants, forcibly took possession of their property and deprived them of their possession. Resisting the suit, the defendants-inamdars denied the claim of the plaintiffs that they were the protected tenants and asserted that they were not in possession of the property and that the certificate proceedings were vitiated by fraud. It was also pleaded by them that without the prior sanction of the Government, no sale certificate could be issued" and, therefore, the sale certificates allegedly claimed to have been issued were invalid.

3. The trial Court framed the relevant issues on the pleadings and after considering the evidence held that the plaintiffs were not entitled to possession of the suit lands, they had no title or possession and they could not establish the true source of irrigation mentioned in the plaint. Although no separate issue was framed concerning the validity of the sale certificates, Exs. A-9 and A-10 issued u/s 38(6) of the Tenancy Act, the trial Court held that inasmuch as the plaintiffs failed to prove that they were the protected tenants, no title had passed to them under the certificates. A further finding also was recorded that the certificates were invalid due to absence of prior sanction of the Government as contemplated by the Act.

4. In the appeal preferred by the unsuccessful plaintiffs, the question was confined to title and the claim regarding easementary rights, it was agreed by both sides, may be left out to be decided either by the Revenue authorities or the Civil Court afresh. Ex. A-8 is the certified copy of the joint application made by the plaintiffs and the first defendant and other purchasers before the Revenue Divisional Officer for issue of a sale certificate u/s 38 of the Tenancy Act. In that application, there was an admission by the first defendant about the sale of the suit land to the plaintiffs. This document was eschewed from consideration by the trial Court relying upon the decision of the Calcutta High Court in Akshoy Kumar Bose and Others Vs. Sukumar Dutta and Others, wherein it was held that the written statement filed in a previous suit was not a public document and, therefore, a certified copy of the same was inadmissible in evidence without calling for the original. The learned single Judge has elaborately considered this aspect and after reviewing the entire case-law on the subject, including the Full Bench judgment of the Madras High Court in Katikineni Venkata Gopala Narasimha Rama Rao Vs. Chitluri Venkataramayya, held:

".... the plaint and written statement form part of record of the acts of the Judge, who is a judicial officer, and to the extent of its proving the factum of filing a particular suit against a particular person, the said document constitutes a public

document, within the meaning of Section 74 of the Evidence Act, and the same can be used for the limited purpose of contradicting the part) In evidence, if those proceedings are shown to be between the same parties. As the plaint and the written statement are not public documents in the sense that they are not prepared by a public officer and they cannot be said to form the acts of the public officer but to the extent they form the records of the acts of the public officer, they are admissible by producing the certified copies to the extent of showing the existence and the condition of such documents within the meaning of Section 65 of the Evidence Act though not their contents as envisaged by that Section. Hence the plaint and written statement are admissible to the extent of proving that a particular suit is filed against a particular individual and to show the proceedings between the parties."

Applying the above principle, the learned Judge ruled that Ex.A-8 was admissible in evidence. The plaintiffs and the first defendant were parties to the document and that the contents therein were supported by the oral evidence of P.W.1. The second defendant who figured as D.W.1 admitted that his father signed the original of Ex.A-8. The learned Judge, therefore, recorded a finding that inasmuch as Ex.A-8 was the basis for the sale certificates, Exs.A-9 and A-10, issued by the authorities, the same could not be held to have been vitiated by fraud and ruled that the plaintiffs are the protected tenants in respect of the suit schedule property and the sale certificates-Exs.A-9 and A-10-are true and binding on the defendants.

5. One more question that was considered by the learned Judge concerned with the validity of the sale certificates - Exs.A-9 and A-10. Section 38(6) of the Tenancy Act contemplated issue of a certificate by the Tribunal in the prescribed form to the protected tenant declaring him to be the purchaser of the land on deposit of the entire amount of the reasonable price fixed. But this was subject to the condition that if the application by the protected tenant for purchase of land related to an inam land, the Tribunal "shall not issue such certificate unless previous sanction of the Government has been obtained therefor." The sanction of the Government for the issue of the sale certificates in question-Exs.A-9 and A-10- was accorded on 10-9-1971 as per Ex.A-14. That was challenged in W.P. No. 4573 of 1971 by the defendants, which was allowed on 28-2-1975 with a direction to the Government to give opportunity to the defendants since no such opportunity was given before the permission was accorded. Fresh orders were passed by the Government according sanction on 27-10-1977 in compliance with the directions given in the writ petition after affording opportunity to the defendants. The learned Judge, therefore, held that the subsequent sanction accorded by the Government cured the illegality. Discussing the effect of the proviso incorporated in the condition concerning the previous sanction of the Government, the learned Judge observed:

"The true effect of the proviso is that the sale would be inoperative, in respect of the inam lands, unless the sanction was accorded by the State Government. The

proviso, in the context in which it has occurred, does not permit the construction that the sale is a nullity if prior sanction is not taken. It only prohibits the authority to issue a certificate till sanction of the Government is obtained. No machinery is provided to validate the sale. Hence the sale is only inoperative till the sanction is granted and subsequent sanction granted by the Government will make the sale perfect."

6. Examining the question from another angle, the learned Judge was of the view that as the inams, by virtue of Section 3 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short "the Abolition Act") stood abolished with effect from 28th July, 1955 and as the State Government, which became the absolute owner of the inam lands, gave consent for the alienation, the objection of non-compliance of Section 38(6) of the Tenancy Act was unsustainable.

7. Yet another question considered by the learned Judge related to the jurisdiction of the Civil Court to entertain the suit. Dealing with the contention that after the Abolition Act came into force, the Civil Court had no jurisdiction to adjudicate the rights in respect of inam lands, the learned Judge after referring to the savings clause contained in Section 33 of the Abolition Act which is to the effect that nothing in the Abolition Act shall affect the provisions of the Tenancy Act except in so far as the provisions of the Tenancy Act are in any way inconsistent with the express provisions of the Abolition Act, held that the provisions in the Tenancy Act pertaining to alienation of lands in favour of protected tenants are not in any way inconsistent with the provisions of Section 3 of the Abolition Act and, therefore, the Abolition Act did not take away the right of the plaintiffs to file the suit in question. The learned Judge, therefore, while allowing the appeal in part declaring the plaintiffs as protected tenants, directed that the possession of the suit land should be restored to them. Aggrieved by that the present letters patent appeal was brought by the defendants.

8. Sri Sivarama Sastry, the learned Counsel for the appellants, argues that in consequence of the abolition of the inams under the Abolition Act, the Government became the owner of the inam lands and, therefore, in respect of such lands, the question of granting ownership certificates would not arise. Even if the sale certificates in question - Exs. A-9 and A-10 - were to be held to be not invalid, no title would pass under them to the plaintiffs unless they, in their capacity as inamdars, got themselves registered as occupants of the lands u/s 4 of the Abolition Act. In respect of rights claimed under special enactments, the remedy by way of a civil suit was barred and that the only course open to an aggrieved party was to approach the statutory authorities specified in the special enactment.

9. Countering these contentions, Sri Mahipathy Rao, learned Counsel for the respondents-plaintiffs, says that all these aspects had been dealt with by the learned single Judge and as no new facets of the arguments already urged before the learned Judge are put forth, the letters patent appeal must be dismissed.

10. Section 38 of the Tenancy Act concerns with the rights of protected tenants to purchase the land-holder's interest. The protected tenant, by subsection (2) of Section 38, is required to make an offer to the landholder stating the price which he is prepared to pay for the land-holder's interest and if the latter refuses or fails to accept the offer and execute the sale deed within three months from the date of offer, Sub-section (3) provides that the protected tenant may apply to the tribunal for the determination of the reasonable price of the land. The tribunal, under Sub-section (4) must give notice to the tenant and the landholder and all persons interested and enquire into the application and determine the reasonable price. Thereafter, the protected tenant shall deposit, under Sub-section (5), with the tribunal, the amount of the price determined. Sub-section (6)(a), which is relevant, is in the following terms:

"(6)(a). On deposit or recovery of the entire amount of the reasonable price being made, the tribunal shall issue a certificate in the prescribed form to the protected tenant declaring him to be the purchaser of the land and such certificate shall be conclusive evidence of the sale as against the landholder and all persons interested therein and the tribunal shall also direct the reasonable price deposited or recovered shall be paid to the landholder.

Provided that if the application of the protected tenant relates to an "Inam" the tribunal shall not issue such certificate unless previous sanction of Government has been obtained therefor."

Undoubtedly, the land in question is an inam land and as per the proviso to Clause (a) of Sub-section (6) of Section 38, the tribunal shall not issue a certificate concerning the purchase of the land-holder's interest by the tenant without the prior sanction of the Government. Ex.A-8 is the certified copy of the joint application made by the plaintiffs and the defendants to the concerned Revenue Official wherein there is an admission of the defendants-inamdars having received the sale consideration from the plaintiffs-protected tenants. This application was made for issuance of a certificate u/s 38(6). Exs. A-9 and A-10 dated 31-3-1961 are the certificates issued by the revenue authority on the basis of the original of Ex.A-8. It is an admitted fact that Governmental sanction was not obtained before the certificates - Exs.A-9 and A-10 - were issued. When this defect was noticed, an application was filed by the plaintiffs-protected tenants before the Government and an order was passed by the Government on 10-9-1971 according sanction. As already stated, that order was challenged by the inamdars (defendants) in W.P. No. 4573 of 1971 contending that no notice was given to them before the sanction was accorded. The writ petition was allowed on the ground of breach of principles of natural justice, in consequence of which, after issuing notices to the inamdars, the Government passed an order on 27-10-1977 granting sanction.

11. The argument of Sri Sivarama Sastry for the appellants is that the sanction given by the Government on 27-10-1977 operated prospectively and inasmuch as all the provisions of the Abolition Act came into force on 1-11-1973, any order

made by the Government with regard to the purchase of the landholder's interest by the protected tenant of an inam land is without jurisdiction. We are unable to agree. As already noticed, u/s 38 of the Tenancy Act, the protected tenant is entitled to purchase the land-holder's interest. If the land happens to be an inam land, the proviso to Sub-section (6)(a) lays down the condition that the previous sanction of the Government is necessary. The absence of prior sanction would not render, in our opinion, the sale a nullity; it is a defect of a curable nature. As rightly held by the learned Judge in the judgment under appeal, the proviso only prohibits the authority to issue the certificate till the sanction is obtained and as there is no machinery to validate the sale, the same becomes inoperative till such time sanction is granted. The learned Judge's view that the subsequent sanction accorded by the Government would make the sale perfect, in our considered opinion, lays down the correct proposition of law. The sale certificates in this case - Exs. A-9 and A-10 -having been granted as far back as 31-3-1961, the sanction accorded by the Government on 27-10-1977 operates retrospectively with effect from the date of issue of Exs. A-9 and A-10:

12. The Abolition Act came into force in two stages; certain provisions referred to in Clause (a) of Sub-section (3) of Section 1 came into force on 20th July, 1955 when the Act was published in the Gazette. The rest of the provisions, by Clause (b) of Sub-section (3) of Section 1, came into force with effect from 1-11-1973, the date notified in the official Gazette in mat behalf by the State Government. With effect from 20th July, 1955, all inams in the Telangana area of the State stood abolished and vested in the State. One of us - M.N. Rao, J., -in Smt. Kannamma v. District Collector, Ranga Reddy 1990(1) An.W.R. 722 had an occasion to deal exhaustively with the provisions of the Abolition Act. The analysis made therein was:

"By Sub-section (1) of Section 3, all inams were abolished and the same were vested in the State. The consequences of vesting are stated in subsection (2) of Section 3. The Land Revenue Act and certain other enactments to the extent they are not repugnant to the provisions of Inams Abolition Act are made applicable to the inams by Clause (a). Clause (b) says that all rights and interests of inamdars, permanent tenants, protected tenants, kabiz-e-kadim and non-protected tenants in respect of the inam lands, other man the interests expressly saved by the provisions of the Act, are taken away and vested absolutely in the State free from all encumbrances. The inams so abolished are liable to payment of land revenue by Clause (c). All rents and land revenue including cesses in respect of the inams after the date of vesting, by Clause (d), are liable to be payable to the State and not to the inamdar. Clause (e) says that all arrears of revenue due on the date of vesting are liable to be recovered from the inamdar. Clause (f) declares that no inam shall be liable for attachment or sale in execution of any decree and any attachment subsisting on the date of vesting shall cease to be in force. The inamdars and other persons whose rights are vested in the State by Clause (b) are entitled to compensation. By Clause (h), the relationship between inamdar, kabiz-e-kadim, permanent tenant,

protected tenant or non-protected tenant is extinguished. The rights of the above persons by Clause (i) shall be limited to what are provided under the Act and any other rights that may have accrued to them before the date of vesting against the inamdar shall cease and shall not be enforceable against the Government or the inamdar. Clauses (a), (b), (c), (e) and (f) came into force on 20-7-1955 by virtue of Section 2(1)(b)(i). The rest of the Clauses- (d, (g) (h) and (i) - came into force on 1-11-1973. Sections 4 to 8 deal with registration of occupancy rights in respect of inamdars, kabiz-e-kadim, permanent tenants, protected tenants and non-protected tenants. The Collector (which expression includes any officer not below the rank of Deputy Collector authorised by the Government) is empowered to conduct enquiry u/s 10 in regard to the nature and history of the lands for the purpose of conferring occupancy rights under Sections 4 to 8. Section 24 provides appeals to the prescribed authority against the orders passed u/s 10. Section 33 saves the application of the provisions of the Tenancy Act, 1950 to any inam or the mutual rights or obligations of an inamdar and his tenants to the extent they are not inconsistent with the provisions of the Act."

Dealing with the question: "when the jural relationship between the inamdar and the protected tenant came to an end", it was held in the aforesaid decision:

?Although Section 3(1) by which the inams were abolished and vested in the State came into force on 20-7-1955, the relationship with regard to the inam land between the inamdar and the kabiz-e-kadim, permanent tenant protected tenant or non-protected tenant came to be extinguished only on 1-11-1973 by virtue of Section 3(2)(h). The accrued rights in the inam ceased to have any effect only with effect from 1-11-1973 by virtue of Section 3(2)(h)."

This judgment in Kannamma's case (4 supra) was affirmed by a Division Bench of this Court in N. Sudershan Reddy and Others Vs. Smt. Kannamma (deceased by LRs) and others,, and it is stated at the Bar that the SLP filed against mat judgment was dismissed by the Supreme Court It is, therefore, dear that the rights of the protected tenants were not extinguished on 20th July, 1955 when the inams stood abolished. Although the defect concerning the absence of Governmental sanction with regard to Exs. A-9 and A-10 was set right in 1977, the same has retrospective validity with effect from the date of issue of certificates viz., 31-3-1961. The sale certificates thus having been obtained by the protected tenants during the interregnum between 20th July, 1955 and 1-11-1973, they cannot be faulted on the ground that the same were obtained after the inams stood abolished. Whatever rights were granted under the Tenancy Act were saved by Section 33 of the Abolition Act to the extent they were not inconsistent with the provisions of the Abolition Act. No provision of the Abolition Act was brought to our notice by the learned Counsel for the appellants to show that the savings clause incorporated in Section 33 of the Abolition Act would not save the sale certificates.

13. The act of the Government in according sanction to purchase the landholder's interest by the protected tenant had the effect of vesting the latter

with the character of an "inamdar" Section 4(1) of the Abolition Act contemplates that every inamdar with effect from the date of vesting, which is 1-11-1973, is entitled to be registered as an occupant of the inam land other than those categories specified therein. There could possibly be no objection from the Government for according recognition to the plaintiffs-protected tenants as the occupants. They were unable to approach the Government as they were thrown out of the lands by the inamdars in 1968 and since then, they have been out of possession. It is due to this reason, they were disabled from invoking the provisions of Section 4 of the Abolition Act. If the contention of Sri Sivarama Sastry is to be accepted that the Civil Court has no jurisdiction in respect of inam lands, it will lead to the anomalous situation of the protected tenants dispossessed from the lands being left with no legal remedy. The sale certificates- Exs.A-9 and A-10- which have retrospective validity from 1961 are the foundation for the title claimed by the plaintiffs-protected tenants for restoration of their lands. The relief of possession claimed by them in the suit could not be granted by the statutory authorities under the Tenancy Act or under the Abolition Act. There is no serious dispute on this question and no provision in this regard in either of the two enactments has been shown to us by the learned counsel for the appellants. It is an accepted principle of law that although some of the claims advanced by a litigant are governed by the provisions of a special enactment, there is no presumption that the jurisdiction of the Civil Court, by necessary implication, is ousted unless it is shown that the relief sought could be granted by the authorities under the Act. Where the authorities have no jurisdiction to grant the relief claimed, there is no warrant for the presumption that the jurisdiction of the Civil Court is ousted. A Division Bench of this Court speaking through one of us - M.N. Rao, J., - elaborately considered this aspect in K. Krishnan and Others Vs. Tirumala Tirupati Devasthanams and Another, and expressed the view:

"It is a well accepted principle of law that ouster of jurisdiction of Civil Courts cannot be presumed lightly; any provision of law which divests the jurisdiction of the Civil Courts must be interpreted strictly. (See: Abdul Waheed Khan Vs. Bhawani and Others,) If the relief sought in a civil suit is outside the purview of the authorities constituted under the special enactment, the legal position is not in doubt, the Civil Courts can be approached for necessary relief. (See: Kanhaiyalal Vs. D.R. Banaji and Others,)."

We, therefore, express our inability to accede to the argument of Sri Sivarama Sastry for the appellants that the Civil Court had no jurisdiction to entertain the suit of the respondents-plaintiffs. The decision of the Supreme Court in Lokraj and Others Vs. Kishan Lal and Others, cited by Sri Sivarama Sastry is not in point. That ruling is an authority for the proposition that after the abolition of the inams, the inamdar lost the pre-existing right, title and interest and along with that, the right to partition also was lost by statutory operation, unless regrant was made.

14. For these reasons, affirming the view of the learned single Judge, we dismiss the appeal. We make it explicit that after the plaintiffs get back possession, they should approach the authorities u/s 4 of the Inams Abolition Act for registration as occupants. No costs.