
(1998) 12 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9143 of 1987

B. Nageswara Rao

APPELLANT

Vs

District Judge, West Godavari and others

RESPONDENT

Date of Decision : 18-12-1998

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 10, 11, 12, 13, 3

Citation : (1999) 2 ALD 254 : (1999) 1 ALT 488 : (1999) 1 APLJ 210

Hon'ble Judges : P. Venkatarama Reddi, Acting C.J.; Bilal Nazki, J; B. Sudershan Reddy, J

Bench : Full Bench

Advocate : Mr. K. Mangachary, for the Appellant; Government Pleader for Revenue and Mr. C.S.K.V. Ramana Murthy, SC for Kesava Swamivari Temple, for the Respondent

Judgement

Bilal Nazki, J.—In ATC No. 113 of 1981 filed by respondent No.3 the Court of the Special Officer (Tenancy) and Principal District Munsif, Tanuku passed an order of eviction against the writ petitioner which has been challenged by way of this writ petition. The writ petition came to be heard by a single Judge of this Court on 7th December, 1989. A Division Bench Judgment reported in Raghavaiah v. Rajagopalaswamy Temple 1987 (1) ALT 400, was passed into service before the learned single Judge who found himself not in agreement with the law laid down by the Division Bench and therefore he placed the matter for consideration by a larger Bench. Therefore this Bench was constituted and in this background the case was heard by this Full Bench.

2. The facts reveal that the respondent temple is the owner of a piece of land measuring Ac.4.60 cents in RS No.69 situated in Kothalaparru village. In the auction held on 3rd May, 1972 the writ petitioner was the highest bidder for getting lease hold rights for Faslies 1382 to 1387. He gave a bid for cultivating the schedule land for payment of annual rent of 62 bags of paddy payable by 31st January every year The auction had been confirmed and approved by the

Commissioner vide his order dated 28th June, 1972. After the expiry of the lease period i.e., by end of 1387 Fasli, the writ petitioner continued to cultivate the land under the provisions of Andhra Pradesh Tenancy Act on the same terms and conditions. He however did not execute any fresh lease deed and also did not pay any rent. He fell in arrears of 31 bags of paddy for Fasli 1389. It was the case of the temple that inspite of repeated demands he did not pay the rent and therefore eviction proceedings were sought on the ground of default in payment of rent. Before the learned District Munsif the tenant who is the present writ petitioner admitted his tenancy but denied that he defaulted in the payment of rents. Evidence was taken and on the basis of the evidence the learned District Munsif came to the conclusion that the tenant-writ petitioner had made defaults; therefore he ordered eviction.

3. When the matter came before the Court of learned single Judge, it was argued before him that no eviction could have been ordered as there was no agreed rent between the parties and in the absence of an agreement with regard to the rent, the petitioner-tenant had to pay only the fair rent. Since the fair rent has not been fixed, he was obliged only to pay the maximum rent. Since this aspect had not been dealt with by the trial Court, therefore the petitioner was not subject to any eviction. This argument was made on the basis of law laid down in *Raghavaiah v. Rajagopalaswamy Temple* (supra). After referring to certain relevant sections of the A.P. (Andhra Area) Tenancy Act the learned single Judge found that he could not persuade himself to be in line with the judgment of Division Bench and referred the matter.

4. Before a reference is made to the Division Bench judgment, certain provisions of A.P. (Andhra Area) Tenancy Act need to be looked into;

Section 3 lays down:

"3. Maximum rent payable by cultivating tenants:--(1) The maximum rates of rent payable by a cultivating tenant to a landlord, expressed in terms of proportion of gross produce, shall be-

(i) in the case of every crop grown on any irrigable land, other than the land irrigated by baling of water - 30 per cent of the gross produce; and

(ii) in the case of every crop grown on any other land including unirrigable land, 25 per cent of the gross produce."

Section 5 lays down :

"5. Agreement as to rent :--The cultivating tenant and the landlord may agree among themselves in regard to the quantum of rent payable for a holding subject to the maximum rent specified in Section 3. The rent so agreed (hereinafter referred to as "agreed rent") whether it is in pursuance of an agreement made between the parties, before or after the commencement of this Act, shall, subject to the provisions of Section 6, be the rent payable for the holding."

Section 6 lays down :

"6. Determination of fair rent :-

(1) Notwithstanding any agreement between the landlord and the cultivating tenant for the payment of an agreed rent, either party may, at any time, apply to the Special Officer for the fixation of fair rent for the holding:

Provided that where any order determining the fair rent has been made after the commencement of the Andhra Pradesh (Andhra Area) Tenancy (Amendment) Act, 1974, in respect of any holding, no application shall be made for the determination of fair rent for that holding while such order is in force.

(2) On receipt of such application, the Special Officer shall, after making an inquiry in the manner prescribed, determine the fair rent, having regard to the following factors, namely-

- (a) the rental values of the lands used for similar purposes in the locality;
- (b) the profits of agriculture on similar lands in the locality;
- (c) the prices of crops and commodities in the locality;
- (d) rates of wages of agricultural labour prevailing in the locality;
- (e) the improvement made to the land by the landlord or the cultivating tenants;
- (f) the assessment payable in respect of the land; and
- (g) such other factors as may be prescribed.

(3) In determining the fair rent, the Special Officer shall presume, until the contrary is proved, that the agreed rent payable in respect of the holding is the fair rent.

(4) The fair rent determined by the Special Officer shall not exceed the maximum rent specified in Section 3.

(5) The order determining the fair rent shall take effect from the commencement of the agricultural year in which the application for the determination of fair rent is made, and shall be in force for a period of six agricultural years."

5. From a perusal of the above quoted provisions of the A.P. (Andhra Area) Tenancy Act, one can understand the scheme of the Act. Section 3 lays down as to what should be the maximum rent payable by tenant to the landlord. That means, the rent can be anything within the limits prescribed by Section 3. u/s 5 the landlord and the tenant has to enter into an agreement with respect to the fixation of the rent and there is a condition precedent in fixing the rent that it should be within the maximum laid down u/s 3. Section 6 is a safeguard in a situation where not has been fixed and agreed upon in terms of Section 5 but is not within the maximum as fixed by Section 3. Therefore, Section 6 lays down that a Special Officer can determine the fair rent. But this determination of fair

rent by the Special Officer is dependent on a motion moved before him by either of the parties. Unless such a motion is made before the Special Officer there can be no question of fixation of a fair rent and in terms of subsection (3) of Section 6 until a party proves that the agreed rent is contrary to the mandate of Section 3 the agreed rent has to be presumed to be fair rent.

6. In the present case at no point of time, the petitioner-tenant urged that the agreed rent was excessive and contrary to Section 3 of the Act. Neither before the primary Court nor appellate Court, such plea was taken. The only point urged was that there was no default. The controversy was mainly on the due date of payment. Moreover, at no stage, the tenant had complained to the prescribed office u/s 6 that the rent fixed u/s 5 of the Act was not a fair rent. Therefore, this question was not open for the petitioner to agitate that the rent agreed between the petitioner and the respondent landlord was not a fair rent. That question can be agitated only in terms of Section 6 before the Special Officer and unless such a course is adopted the rent agreed in terms of Section 5 has to be presumed to be fair rent. In the light of the scheme of this Act which does not involve any complexities, it becomes abundantly clear that a tenant is obliged to pay the rent as fixed u/s 5 and the landlord is obliged to accept only that rent which is fixed as agreed rent u/s 5. If any one of them has any grievance that the rent fixed crosses the limit prescribed by Section 3, the remedy open to him is to move the Special Officer u/s 6. Unless that is done, it has to be presumed that the agreed rent is fair rent.

7. Now coming to the Judgment of the Division Bench, it becomes important to examine Section 13 because the Division Bench perhaps was persuaded to take the view it had taken in view of words "rent due" occurring in Section 13.

"13. Termination of tenancy :--Notwithstanding anything contained in Sections 10, 11, and 12, no landlord shall be entitled to terminate the tenancy and evict his cultivating tenant except by an application made in that behalf of the Special Officer and unless such cultivating tenant-

(a) has failed to pay the rent due by him within a period of one month from the date stipulated in the lease deed, or in the absence of such stipulation, within a period of one month from the date on which the rent is due according to the usage of the locality; and in case the rent is payable in the form of a share in the produce, has failed to deliver the produce at the time of harvest; or

(b) has done any act or has been guilty of any neglect, which is destructive of, or permanently injurious to the land; or

(c) has sub-let the land; or

(d) has violated any of the conditions of the tenancy regarding the uses to which the land may be put; or

(e) has wilfully denied the landlord's title to the land; or

(f) has failed to comply with any order passed or direction issued by the Special Officer or the District Judge under this Act."

8. While defining the "rent due" the Division Bench came to the conclusion that, "rent due" is only the fair rent and unless it is decided whether the rent agreed between the parties is fair rent or not, there cannot be any eviction, because before a case of eviction is made out the landlord has to show that the tenant has failed to pay the due rent which according to the Division Bench was the "fair rent" and unless the fair rent is fixed in terms of Section 6 there cannot be eviction for non-payment of the rent. This proposition of law is too wide and in view of the reasons given herein above, with respect, we record our disagreement to the wide proposition of law laid down by the Division Bench. The Division Bench relied on the decision of the learned single Judge in C. Sriramulu v. SRSV Temple 1978 (2) ALT 308 : 1978 (2) APLJ 227. The law laid down therein was in the facts and circumstances where application for (fair) rent was in fact filed and it was pending adjudication before the competent authority. The ratio of that judgment accords with the view taken by us. In our view, "due rent" is the rent fixed between the parties in terms of Section 5, or the fair rent as fixed u/s 6 of the Act. Once no grievance is shown against the agreed rent u/s 5 before the Special Officer u/s 6, the agreed rent has to be taken as "due rent".

9. Now coming to the main writ petition, we have not found any ground to intervene as the Courts below have found on facts that the agreed rent was not paid before the due date and therefore there was no option with the Court below but to order eviction of the tenant.

10. The writ petition is accordingly dismissed. No order as to costs.