
(2012) 10 AP CK 0010

In the Andhra Pradesh High Court

Case No : CRP No"s. 3927 of 2011, 583, 610 and 809 of 2012

Chippa Raghuramulu and Others

APPELLANT

Vs

Joint Collector, Hyderabad and Others

RESPONDENT

Date of Decision : 13-10-2012

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 14(1), 15, 17, 2(1)(v), 21(3)

Citation : (2013) 1 ALD 377

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : Vedula Venkata Ramana, for the Appellant; B. Venkata Rama Rao, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—In all these civil revision petitions filed u/s 91 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, (for short, "the Tenancy Act"), the petitioners and the respondents are the same. By a common order, dated 4.2.2011, in Case Nos. F2/2269/2006; F2/2270/2006; F2/2271/ 2006 and F2/2272/2006, the Joint Collector, Ranga Reddy District, dismissed the appeals filed by the petitioners and thereby confirmed the orders passed by the Special Grade Deputy Collector and Revenue Divisional Officer, Ranga Reddy District in Case No. L/419/2004 and the panchanama, dated 30.1.2003, conducted by the Additional Mandal Revenue Inspector, Office of the Deputy Collector and Mandal Revenue Officer, Saroornagar Mandal, Ranga Reddy District. This case has a chequered career. Mohammad Allaiddin was pattadar of agricultural lands bearing Survey Nos. 367, 368 and 369, totally admeasuring Acs. 45.07 guntas, situated at Nadergul Village, Saroornagar Mandal, Ranga Reddy District. He died leaving behind his two sons viz., Shaik Jamaluddin and Shaik Imamuddin. The two sons of Allaiddin executed a sale deed on 2.12.1965 in favour of Smt. Vidya Mashalkar in respect of Acs. 45.07 guntas. Mutation in the name of Smt. Vidya Mashalkar was effected in the revenue records. She sold

Acs. 28.07 guntas out of Acs. 45.07 guntas covered by Survey Nos. 367, 368 and 369 of Nadergul Village, in favour of Chippa Babaiah under a registered sale deed, dated 30.3.1974. Chippa Babaiah got his name mutated in the revenue records in respect of the land purchased by him. Chippa Babaiah died and thereafter his wife Pentamma and his sons Raghuramulu, Prabhakar, Sudhakar and Krishna got mutated their names in the revenue records. Katta Michael was the protected tenant of the lands admeasuring Acs. 45.07 guntas comprising Survey Nos. 367, 368 and 369. He died leaving behind his son Katta Shouraiyah as his legal heir. Katta Shouraiyah filed an application u/s 40 of the Tenancy Act and the said application came to be allowed by the Mandal Revenue Officer, Saroornagar, Ranga Reddy District on 25.8.1990 vide Case No. D/1832/85. Thereafter, he filed an application u/s 32(1) and (2) of the Tenancy Act seeking restoration of possession of the lands covered under protected tenancy. Initially the application filed by him ended in dismissal by the Mandal Revenue Officer, Saroornagar. Thereupon, he filed an appeal before the Joint Collector, Ranga Reddy District, and the appeal also ended in dismissal and thereafter, he carried the matter in revision to this Court. Pending the revision, Katta Shouraiyah died and his sons came on record as his legal representatives. The revision being CRP No. 582 of 1998 came to be allowed on 16.9.1999 remanding the matter back to the Joint Collector for fresh consideration. The Joint Collector, by an order, dated 23.12.2000, allowed the appeal setting aside the order of the Mandal Revenue Officer, dated 16.1.1993, passed in Case No. B/104/91 and thereby ordered for restoration of the lands to the legal representatives of Katta Shouraiyah. The petitioners, who are claiming the lands under registered sale deeds executed by Smt. Vidya Mashalkar, challenged the order passed by the Joint Collector, Ranga Reddy District in Case No. F2/1040/2000, dated 23.12.2000, by filing CRP No. 354 of 2001. The said C.R.P. ended in dismissal, by order, dated 20.9.2002. The petitioners unsuccessfully carried the matter to the Supreme Court. The petition filed by them to condone the delay in filing the SLP ended in dismissal on 25.11.2004. The legal heirs of the protected tenant-Katta Shouraiyah filed petition before the Mandal Revenue Officer for implementation of the order passed u/s 32 of the Tenancy Act. The Mandal Revenue Officer effected delivery of the lands to the legal heirs of the protected tenant under Panchanama, dated 30.1.2003. The legal heirs of the protected tenant filed petition before the Special Grade Deputy Collector and Revenue Divisional Officer u/s 38(1) of the Tenancy Act for grant of sale certificate. They pleaded before the Special Grade Deputy Collector and Revenue Divisional Officer that they exercised their option to purchase the lands covered under tenancy and that the landholders failed to respond to their offer. They also pleaded that the sale of the lands by the landholders to Smt. Vidya Mashalkar and thereafter to Chippa Babaiah does not bind them and they are non est in law. Delivery of the lands came to be effected under panchanama, dated 30.1.2003. The Special Grade Deputy Collector and Revenue Divisional Officer conducted enquiry on the application filed by the legal heirs of the protected tenant u/s 38(1) of the Tenancy Act and recorded a finding that the legal heirs of the protected tenant are entitled for grant of sale certificate subject

to their paying market value fixed at Rs. 3861/- x 15 = Rs. 57,915/-. For better appreciation, I may refer relevant portion of the order, dated 31.5.2004, passed by the Special Grade Deputy Collector and Revenue Divisional Officer, Ranga Reddy East Division, on an application moved u/s 38(1) of the Tenancy Act and it is thus:

It is clearly established that, the original pattadars are no more interested in the said agricultural lands and their whereabouts were not aware to the applicants as well as in the local area. This apart, the petitioners being land less poor who do not have any other land except the lands in their possession as tenants. Therefore they are entitled to purchase the rights of the pattadars as per the provisions contemplated u/s 38(1) of the Act, the applicants herein are liable to pay the compensation to the pattadars who remained ex parte. Therefore, this Tribunal determines the market value of the said lands basing on the prevailing annual rent. As per the Tenancy Certificate the rent of the lands in question is Rs. 120/- per acre. The application schedule lands are said to be dry lands and therefore, the annual rental for the entire lands admeasuring acres 32.07 Gts., Rs. 3861/-. Basing on the said rental value, the market value is fixed at Rs. 3861 X 15 = Rs. 57,915/- in accordance with the provisions of the Act, since the respondents remained ex parte in the proceedings the applicants are hereby directed to deposit before this Tribunal a sum of Rs. 57,915/- of the market value of the said lands which the respondents are entitled under the provisions of the Act.

Therefore, the applicants are hereby directed to deposit the sum of Rs. 57,915/- before this office on or before 20.6.2004 and upon the deposit of the said amount the petitioners are entitled to be issued a sale certificate in respect of the above said agricultural lands in Sy. No. 367 acres 9-17 Gts. Sy. No. 368 acre 10-33 Gts., Sy. No. 369 acres 11-37 Gts. of Nadergul Village, Saroornagar Mandal, Ranga Reddy District

The petitioners assailed the order passed by the Mandal Revenue Officer as well as the order passed by the Special Grade Deputy Collector and. Revenue Divisional Officer, Ranga Reddy East Division, by filing appeals before the Joint Collector, Ranga Reddy District, u/s 90 of the Tenancy Act. The Joint Collector, allowed the appeals and remanded the matter back to the original authorities i.e., Mandal Revenue Officer, Saroornagar, and the Special Grade Deputy Collector and Revenue Divisional Officer, Ranga Reddy District, for de nova enquiry. The order passed by the Joint Collector came to be challenged before this Court by filing CRP Nos. 2755, 2774, 2775, and 2776 of 2005, The said C.R.Ps. came to be disposed of by a common order, dated 17.4.2006, remanding the matter back to the Joint Collector to dispose of the matters afresh keeping in view the orders passed by this Court in CRP No. 582 of 1998, dated 16.9.1999 and CRP No. 354 of 2001, dated 20.9.2002. On remand, the Joint Collector heard the matters afresh and proceeded to dismiss the appeals by order, dated 4.2.2011. Hence, these civil revision petitions by the widow and children of

Chippa Babaiah, the purchaser.

2. Heard Sri B. Venkata Rama Rao, learned Counsel appearing for the petitioners and Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the unofficial respondents (i.e. respondents 3 to 8).

3. It is contended by Sri B. Venkata Rama Rao, learned Counsel appearing for the petitioners that u/s 38 of the Tenancy Act, a tenant is not entitled to insist the landholder to sell his interest in the leased lands if his holding is less than two family holdings. It is also contended by him that there is no material placed on record by the unofficial respondents that the lands held by the original protected tenant were less than one family holding. A further contention has been advanced that on an application u/s 38 of the Tenancy Act, not only the landholder but also all persons interested are required to be heard before granting relief as sought for by the protected tenant. According to the learned Counsel the unofficial respondents have not got succession to the tenancy rights as provided u/s 40 of the Tenancy Act and therefore, they are not entitled to seek enforcement of the order passed u/s 32 of the Tenancy Act in favour of Katta Shouraiyah. In a way, it is his contention that succession obtained by Katta Shouraiyah to the tenancy rights u/s 40 of the Tenancy Act in Case File No. 1832/85, dated 25.8.1990, shall stand lapsed with his death and unless fresh certificate of succession has been obtained by the unofficial respondents being the legal representatives of Katta Shouraiyah, they are not entitled to seek restoration of the lands covered under the tenancy. In support of his submissions, reliance has been placed on the judgment of the Supreme Court in Ponnala Narsing Rao Vs. Nallolla Pantaiah and Others, and the decisions of this Court in Samala Venkaiah and others v. Bakka Nagaiah and others, 1988 (1) ALT 703 and Nallari Ranga Seshagiri Rao v. Mallani Achaiah, (in CRP No. 2034 of 1963, dated 22.6.1966).

4. In Ponnala Narsing Rao's case (supra), it has been held by the Supreme Court that a tenant's application for possession u/s 32 of the Tenancy Act must be filed within a reasonable time.

5. In Samala Venkaiah and other's case (supra), it has been held by this Court that u/s 38(7) of the Tenancy Act, a protected tenant will be entitled to one family holding while the landholder will be entitled upto two family holdings. There is no principle of aggregation of the various lands held by the individual members of the family of the landholder or of the family of the protected tenant is contemplated. Section 38(7) deals with the family holdings which can be held by an individual landholder or an individual protected tenant. Para 23 of the cited judgment needs to be noted and it is thus:

23. The next question is whether the reference to the family of five members in Section 4 has anything to do with the principle of aggregation which is sought to be applied for Section 38(7). In my opinion there is absolutely no connection. All that Section 4 of the un-amended Act which dealt with economic holding and of

the amended Act which dealt with family holding in Section 4 meant to do was to determine an area which would sustain a normal family of five persons. So far as this Section 4 is concerned, the emphasis is in determining an area which would sustain five persons by yielding a gross income of Rs. 1600/- or a net income of Rs. 800/-. The extent of land which would yield that income is designated as a family holding. When we come to Section 38(7) of the Act it is clearly said that a protected tenant will be entitled to one family holding while the land-holder will be entitled upto two family holdings. As already stated no principle of aggregation of the various lands held by the individual members of the family of the land-holder or of the family of the protected tenant is contemplated. Only for the purpose of understanding what is meant by the area which a family holding, one has to refer back to Section 4 and any notification issued under that section. In other words while Section 38(7) deals with the family holdings which can be held by an individual landholder or an individual protected tenant, Section 4 deals only with the area that a family holding means. Otherwise there is no connection whatsoever. The family of five persons mentioned in Section 4 does not get incorporated into Section 38(7) in any manner. The family of five persons mentioned in Section 4 is only for the purpose of determining the extent of land or area which may yield a gross income of Rs. 1600/- or a net income of Rs. 800/- sufficient to sustain such a family of five persons. If this Section 4 is not relevant for purpose of Section 38(7) except for noting the area meant by a family holding there is no question of aggregating the various properties individually held by various landholders or protected tenants. In the case before Jeevan Reddy, J above referred to it was argued that the land individually held by a protected tenant and his wife should be aggregated for the purpose of Section 38(7) and that was not accepted. There cannot be a different approach so far as cases of the land-holders are concerned. In the same manner, the properties individually held by the husband and wife in the land-holder's family cannot be aggregated.

6. Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the unofficial respondents submits that the issue with regard to restoration of land to Katta Shouraiyah, who is the legal heir of the protected tenant, set at rest with the dismissal of the SLP delay condonation petition by the Supreme Court and therefore, it is impermissible for the petitioners to contend that the unofficial respondents, who came on record as legal heirs of Katta Shouraiyah pending the proceedings, are not entitled to make an application for delivery of the property pursuant to the order passed u/s 32(1) of the Tenancy Act without obtaining fresh succession proceedings u/s 40 of the Tenancy Act. It is also contended by him that once the sales effected by the landholders are non est in law, the petitioners who are claiming right through the purchasers are not required to be heard either on an application seeking delivery of the lands or on an application filed u/s 38(1) of the Tenancy Act. Learned Senior Counsel would submit that the protected tenant has a right to become full owner of the lands in his possession. He would also submit that the same contention has been advanced by the

petitioners in the earlier set of revisions and their contentions came to be negated in CRP No. 2755 of 2005 and Batch. Learned Senior Counsel took me to the relevant portion of the common order passed in CRP No. 2755 of 2005 and Batch, and it is thus:

While allowing the appeals being Case No. F2/6912/2004 (out of which, CRP No. 2775 of 2005 arises) and Case No. F2/5768/2004 (out of which, CRP No. 2776 of 2005 arises), the Joint Collector placed reliance on Rules 15 and 16 of the Rules [Rules were promulgated by A.P. Notification (Revenue) No. 58, dated 1.11.1950, published in Government of Hyderabad Gazette, Vol. 81, No. 59, dated 16.11.1950. These rules were made regarding Sections 5, 14(1), (2), 15, 17, 21(3), 24(2), 29(2), 32(1), (2)]. Rules 15 and 16 of the Rules contemplated enquiry and serving a copy of an application made by the tenants u/s 32 of the Tenancy Act to the persons against whom an order is sought. These rules have no application at the stage of handing over possession pursuant to an order passed u/s 32(1) of Tenancy Act for restoration of possession. There is no dispute that the procedure u/s 32(1) of Tenancy Act has already been followed and the orders are now passed by authorities for restoration of possession which are also confirmed by tills Court in Chippa Raghuramulu's case (supra). In that view of the matter the Joint Collector misdirected himself in coming to the conclusion that Rules 15 and 16 of the Rules apply even at the stage of handing over possession pursuant to order u/s 32(1) of the Tenancy Act. For tin's reason, these matters are liable to be set aside.

7. In view of the contentions advanced by the learned Counsel appearing for the parties, the points that arise for consideration in these revisions are:

(1) Whether the application filed by the legal representatives of Katta Shouraiiah u/s 94 of the Tenancy Act is maintainable without obtaining succession as provided u/s 40 of the Tenancy Act?

(2) Whether late Katta Shouraiiah got right to purchase the lands covered under the protected tenancy?

8. Point No. 1: It is a matter of record that late Katta Shouraiiah filed an application u/s 40 of the Tenancy Act in Case File No. D/1832/85, dated 25.8.1990. After obtaining succession proceedings, he filed petition u/s 32(1) of the Tenancy Act seeking restoration of the possession of the lands covered under the protected tenancy. Pending finalization of the proceedings, he died and his legal representatives came on record. The entitlement of the legal representatives to continue the proceedings came to be examined by this Court in Chippa Raghuramulu and Others Vs. Kata Showariah and Others, and held that succession proceedings obtained u/s 40 of the Tenancy Act by Katta Shouraiiah enures to the benefit of his legal representatives. For better appreciation, I may refer relevant portion of the order passed in the above referred case and it is thus:

Admittedly, Katta Michel was the tenant. As per definition of Section 2(1)(v)

"tenant" includes a person who is deemed to be a tenant under the provisions of the Act. Section 5 of the Act deals with the tenants who are deemed to be tenants. The lower appellate authority, after considering the rival contentions, recorded a finding that there was no surrender of the oral tenancy and the petitioners have failed to prove their contention with reference to any documentary evidence with regard to the surrender of oral tenancy by Katta Michel or his heirs. It is the case of the respondents that Katta Michel was declared as protected tenant u/s 37 of the Act alone as he was the cultivating tenant when the Act came into force in 1950 and there is no other person declared as protected tenant u/s 34 and, therefore, Katta Michel alone was declared as protected tenant as he was found in cultivation as a tenant during the year 1950-51 and his name was rightly entered in the Protected Tenancy Register. Accordingly, a certificate was also issued under Sections 35 and 37 of the Act. It is further stated that u/s 30, the land covered by the protected tenancy cannot be assigned or sold in any manner and all such transfers are invalid. It is further stated that u/s 38-D, when the landholder intends to sell the same, he shall give a notice in writing of his intention to such protected tenant and offer to sell the land to him. In case, the protected tenant intends to purchase the land, he shall intimate in writing his readiness to do so within six months from the date of receipt of such a notice. Admittedly, no such notice was issued by the landholder. The landholder was Shaik Alladdin. Shaik Alladdin is not claiming the rights over the property. Sons of Mohammed Alladdin sold the said land to Smt. Vidya Mashalkar in 1965. No permission was obtained under Sections 47 and 48 of the Tenancy Act for the sale of the said agricultural lands. Therefore, the petitioners and their predecessors in title have not acquired any title or legal right over the said properties. Admittedly, the rights of the protected tenants are inheritable u/s 40 and the 1st respondent obtained Succession Certificate u/s 40 and after his death, his sons (respondents 2 to 4) have inherited the rights of the protected tenancy rights.

In view of the categorical finding recorded in the earlier round of litigation between the same parties, the legal representatives of Katta Shouraiyah are not required to obtain any fresh succession certificate u/s 40 of the Tenancy Act from the Mandal Revenue Officer.

9. A contention has been advanced by Sri B. Venkata Rama Rao, learned Counsel appearing for the petitioners that since valuable rights of the petitioners are being affected by executing the order passed u/s 32(1) of the Tenancy Act, they are required to be put on notice before delivery is effected to the legal heirs of Katta Shouraiyah, I do not see any substance in his contention, since the sales held in favour of the petitioners have been held to be invalid and therefore, the petitioners are not required to be put on notice on an application filed u/s 94 of the Tenancy Act.

10. Point No. 2: u/s 38(1) of the Tenancy Act a protected tenant shall at any time after the commencement of the Tenancy Act be entitled to purchase the

landholders interest. A procedure has been prescribed under sub-section (2) of Section 38 of the Tenancy Act when the protected tenant who desires to exercise the right conferred by sub-section (1) of Section 32 of the Tenancy Act. The legal heirs of Katta Shouraiyah have exercised their option to purchase the lands by giving a notice to the landholders. There being no response, they moved an application u/s 38(1) of the Tenancy Act before the Revenue Divisional Officer. It is the contention of the petitioners, being the purchasers of the landholders interest, that they are not put on notice and therefore, the order passed by the Special Grade Deputy Collector and Revenue Divisional Officer, Ranga Reddy East Division, in File No. L/419/04, dated 31.5.2004, as confirmed by the Joint Collector, Ranga Reddy District, by his order, dated 4.2.2011, is not legal and proper.

11. According to the learned Counsel, the interested person has not been defined in the Tenancy Act and therefore, the definition of "interested person" mentioned in Land Census Rules, 1954 needs to be considered. Learned Counsel refers Rule 2(e) of the Land Census Rules, 1954, which defines "interested person" as follows:

"interested person" means a person who has or who claims to have any interest in land either as land-holder, occupant, mortgagee, assignee of rent, tenant or otherwise;

By referring the above definition, learned Counsel would contend that the petitioners being in occupation of the lands come under interested persons and therefore, they are required to be put on notice on an application moved by the legal heirs of Katta Shouraiyah before declaring that they are entitled to purchase the rights of the landholders. In a way, it is his contention that the Revenue Divisional Officer has to record a finding that the holding of Katta Shouraiyah is less than one family holding and the holding of landholders is more than two standard holdings. Unless and until such findings are recorded, there cannot be any declaration that the legal heirs of Katta Shouraiyah are entitled to purchase the rights of landholders.

12. Section 38 of the Tenancy Act deals with right of protected tenant to purchase land and it is subject to the provisions of sub-section (7). It is necessary to refer sub-section (7) of Section 38 of the Tenancy Act and it is thus:

38. (7) The right of a protected tenant under this section to purchase from his landholder the land held by him as a protected tenant shall be subject to the following conditions, namely:

(a) If the protected tenant does not hold any land as a landholder the purchase of the land held by him as a protected tenant shall be limited to the extent of the area of a family holding for the local area concerned.

(b) If the protected tenant holds any land as a landholder, the purchase of the land held by him as a protected tenant shall be limited to such area as along with

other land held by him as a landholder will make the total area of land that will be held by him as a landholder equal to the area of a family holding for the local area concerned:

Provided that the land remaining is more than the land which the protected tenant is entitled to purchase under this section, the first preference to purchase the said land, at the prevailing market price in the local area, shall vest in the protected tenant;

Provided further that in the case of purchase by any person other than the protected tenant, the rights and interests of the said tenant in the lease land, shall continue as before.

(c) The extent of the land remaining with the landholder after the purchase of the land by the protected tenant, whether to cultivate it personally or otherwise, shall not be less than two times the area of a family holding for the local area concerned.]

From Section 38(7) of the Tenancy Act, it is clear that the extent of land that can be held by landholder is limited to two family holdings while the extent the protected tenant is entitled to hold is limited to one family holding. The legal representatives of Katta Shouraiyah have specifically pleaded in their application that Katta Shouraiyah had no land except the lands covered under the tenancy. Nothing is placed before the Joint Collector that the said Katta Shouraiyah possessed lands other than the lands covered under the tenancy. Therefore, the contention of the petitioners that late Katta Shouraiyah was not entitled to purchase the rights of the landholders has no substance. Even the petitioners failed to place on record any material to show that the landholders holding was less than the two standard family holdings at the relevant point of time before the appellate authority (Joint Collector). In that view of the matter, I find that late Katta Shouraiyah was entitled to purchase the interests of the landholders in the leased lands and the said right had been passed to the unofficial respondents being his legal heirs.

Accordingly, all the civil revision petitions fail and they are hereby dismissed. No order as to costs.