
(2002) 09 AP CK 0091
In the Andhra Pradesh High Court
Case No : CRP No. 354 of 2001

Chippa Raghuramulu and Others	Vs	APPELLANT
Kata Showariah and Others		RESPONDENT

Date of Decision : 20-09-2002

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 2(1), 30, 34, 35, 37

Citation : (2002) 6 ALD 350

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : P. Venugopal, for the Appellant; Sudhakara Reddy, Respondent Nos. 1 to 4 and Government Pleader for Revenue, Respondent Nos. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—This civil revision petition is filed against the order of the Joint Collector, Ranga Reddy District dated 23-12-2000 made in Case No. F2/1040/2000.

2. The petitioners herein are claiming title in respect of the suit schedule property bearing Sy.Nos 367, 368 and 369 admeasuring about Ac.32-07 gts situated at Nadargul village, Saroornagar Mandal, Ranga Reddy District through the landholder of Shaik Alladdin. It is the case of the petitioners herein that one Shaik Alladdin was the landholder of the said lands after his death, his legal representatives sold the land to one Smt. Vidya Mashalkar W/o. Bhagawanth Rao Mashalkar under a registered sale deed dated 2-12-1965. As per the contents of the sale deed it is stated that Mohammed Jamaluddin, Mohammed Imamuddin sons of late Mohammed Alladdin sold the land admeasuring Ac.45-07 gts of land comprising of Sy.Nos. 367, 368 and 369 of Nadargul village in favour of Smt. Vidya Mashalkar. It is further stated that Smt. Vidya Mashalkar, in turn, sold the said lands by registered sale deed dated 30-3-1994 in favour of Chippa Babaiah

(father of the petitioners herein). After the death of Chippa Babaiah, his sons (petitioners herein) are in possession and enjoyment of the same as his legal heirs. It is stated in the sale deed that Smt. Vidya Mashalkar sold Ac. 13-00 of the agricultural land to one N.S.Madhava Rao S/o. R. Narayanaswamy and after excluding the said Ac. 13-00, the remaining lands of Ac.32-07 gts have been sold to the father of the petitioners herein. Thus, the petitioners herein are claiming the right, title and interest over the said agricultural lands through the landholder.

3. The 1st respondent is the S/o. Katta Michel Katta Michel admittedly is the protected tenant of the said lands. Katta Michel died and his son Katta Sowraiah also died. Respondents 2 to 4 herein are the sons of Katta Sowraiah i.e., grandsons of Katta Michel. It is the claim of the respondents that they are the protected tenants.

4. The case has chequered history which is as follows: the 1st respondent -late K. Sowraiah filed an application u/s 32 (1) of the A.P. (T.A.) Tenancy and Agricultural Lands Act, 1950 (for short "the Tenancy Act") before the Mandal Revenue Officer, Saroornagar in Proceedings No. B/104/91 stating that he is the successor of the protected tenant and a succession certificate has been granted in his favour u/s 40 of the Tenancy Act, in File No. D/1832/1985 by the Mandal Revenue Officer, Saroornagar Mandal, R.R.District on 25-8-1990 in respect of the agricultural lands bearing Sy.No. 367 admeasuring Ac.9-17 gts, Sy.No. 368 admeasuring Ac. 10-33 gts and Sy.No. 369 admeasuring Ac.1 1-37 gts i.e., for the total extent of Ac.32-07 gts situated at Nadargul village, Saroornagar Mandal, R.R. District and the petitioners herein are in possession of the said lands and they are required to be ousted from the possession and the 1st respondent may be delivered the vacant possession of the said lands. The 1st respondent also filed a copy of the tenancy record for the year 1950-51 and accordingly requested the Mandal Revenue Officer to pass orders declaring that the 1st respondent is the undisputed protected tenant and possessor of the said land and he may be put in actual possession of the said land by evicting the petitioners herein.

5. The petitioners herein filed counter before the Mandal Revenue Officer on 30-9-1992 stating that the petition filed by the 1st respondent herein is not maintainable. The Succession Certificate obtained by the 1st respondent is not legal and valid and it is not stated as to who is the actual and original protected tenant and when he was dispossessed. It is further stated that one Shaik Alladdin was the pattedar and he was in possession of the said lands as per the pahani patrikas for the years 1949-50, 1951-52, 1952-53, 1953-54, 1955-58, 1958-59, 1960-61, 1961-62, 1962-63 and 1964-65 and in the year 1965-66 the said lands have been sold away by the pattedar in favour of Smt. Vidya Mashalkar W/o. Bhagwanthrao Mashalkar through the registered sale deed vide document No. 1745 of 1965 dated 22-12-1965 and since then Smt. Vidya Mashalkar became the owner and pattedar and thereafter she sold the said lands in favour of the father of the petitioners herein namely, Chippa Babaiah vide

registered sale deed document No. 671 of 1974, dated 30-3-1974. It is farther stated that Smt. Vidya Mashalkar purchased the said lands after obtaining necessary permission under Sections 47 and 48 of the Tenancy Act. If really any protected tenancy is there no such permission would have been granted at that time in 1965. It is further stated that "the alleged protected tenant of the said lands by name Michel who left the lands covered under his protected tenancy in the year 1950 by way of surrendering his rights of protected tenancy in favour of pattedar orally prior to the Amendment in 1954 u/s 19 of the said Act".

6. It is stated that when once Michel was not at all the protected tenant, the respondents herein are not entitled to file the petition u/s 32(1) of the Tenancy Act. The father of the 1st respondent was not at all the protected tenant and that the respondents herein are not entitled to file the petition u/s 32(1) of the Tenancy Act. When the father of the respondents was not at all the protected tenants, the question of granting Succession Certificate u/s 40 of the said Act does not arise at all and the said certificate was illegally granted. It is stated that there is no whisper about the possession of the respondents from 1949 onwards and as such mere possession of the certificate does not get any right of protected tenancy. It is stated that "the said alleged protected tenant already surrendered his protected tenancy rights in favour of the pattedars prior to 1950 and left the lands, the said oral surrender is valid". The Succession Certificate granted in favour of the respondents indicates that there are no protected tenants over the said lands as per the original protected tenancy abstract and hence the respondents are not entitled to claim possession. It is categorically stated by the petitioners herein in their counter before the Mandal Revenue Officer that the protected tenant has orally surrendered such protected tenancy lands in favour of the pattedar and left the lands much prior to 1950. It is also further stated that the Katta Sowraiah - 1st respondent herein has not made the landholder as party to Section 40 Succession proceedings.

7. On the pleadings of the respective parties and the rival contentions, the Mandal Revenue Officer, Saroornagar, considered the documentary evidence adduced on behalf of the respondents herein namely. Succession Certificate (Ex.A-1) dated 25-8-1990 granted by the Mandal Revenue Officer in Case No. D/1 832/85, Ex.A-2 (Xerox copy of the certified copy of the tenancy record for the year 1950-51), Ex.A3 (Xerox copy of certificate issued under Sections 35 and 37 of Tenancy Act, Ex.A4 (Xerox copy of the certified copy of the pahani for the year 1953 and also Exs.B1 to Ex.B38 viz., Xerox copies of the pahanies for the years 1949-50, 1951-52, 1953-54, 1954-55, 1955-58. 1958-59, 1960 - 1983 and the sale deeds dated 2-12-1965, 30-3-1974, agricultural receipts etc., made the following order:

"The material papers filed by both parties have been examined. The statement of the petitioner, respondent No. 2 and the witnesses have been examined. The petitioner could not prove that he or his father were in continuous possession and cultivated the land. He has not filed any documents that he has paid koul

amount to the pattedar. The witnesses have stated that of the adjacent lands. He never seen the petitioner or the father of the petitioner cultivating the lands. The petitioner has not proved that he has cultivated the land and not presented any witnesses. The Hon'ble High Court in the decision in Midde Varaprasada Rao Vs. Collector of Krishna, and as per the judgment stated that if the Tenant not cultivated the tenancy lands prior to 1954 it is deemed to be oral surrendered. In this case the petitioner could not be proved that he and his father cultivated the lands and in possession. No documentary evidence proving his possession submission. Hence undoubtedly the petitioner is never in possession and cultivated and could not establish his possession prior to 1950 and after the preparation of tenancy record and even till to date. Hence, even though his name is recorded in P.T. Register. 1950, as per the decision of the High Court, since he was not in possession and not cultivated the lands prior to 1954 or till today, the P.T. is deemed to be oral surrendered. Hence, the petition is dismissed."

8. Aggrieved by the said order of the Mandal Revenue Officer dated 16-1-1963, the 1st respondent herein filed appeal No. B4/ 83/93 before the Joint Collector, Ranga Reddy District. It was the contention of the petitioners herein before the appellate authority that the father of the petitioners herein are not aware of the proceedings u/s 40 of the said Act in respect of the grant of Succession Certificate in favour of Katta Sawraiah - 1st respondent herein. It is further stated that the father of the 1st respondent is not the protected tenant and they never cultivated the lands. The Joint Collector by his order dated 15-11-1997 made the following order:

"Perused the lower Court record and verified the documents filed therein. As per the copy of the protected tenancy register and certificate issued under Sections 35 and 37 of Tenancy Act, one Katta Michel S/o. Ariaiah is the protected tenant over the lands bearing S.No. 367 extent of Ac.15.17gts, Sy.No. 368 extent of Ac. 17-33 gts and Sy.No. 369 extent of Ac. 11.37 gts situated at Nadergul village, Saroomagar Mandal. After demise of protected tenant, on filing the petition by the present appellant and in view of the compromise filed by one Madhava Rao the purchaser of land of Ac. 13-00 in S.No. 367 and 368, the Mandal Revenue Officer sanctioned succession for the remaining area of Ac.32-07 gts in Sy.No. 367, 368 and 369 in favour of Kata Sowraiah S/o.Kata Michel u/s 40 of the A.P. (TA) Tenancy & Agricultural Lands Act, 1950 vide proc.No. D/1832/85 dated 25-8-1990. This order u/s 40 was not challenged.

The Counsel for the respondents contended that there is no protected tenant over the lands under appeal and that the Mandal Revenue Officer issued memo vide D/35/90 dated 31-1-1990 to this effect. On perusal of Protected Tenancy Register the existence of the name of protected tenant cannot be denied.

Regarding possession of the protected tenant, the name of the protected tenant is found as occupant in the pahani for the year 1951-52. In the other pahanies for the year 1949 - 50 and 1953-54 and in subsequent pahani the name of the protected tenant is not found as cultivator. The name of the Yelkonda Lingaiah is

found as cultivator in pahanies for the year 1953-54 in respect of the above lands.

It is clear from the above records that prior to the date of Amendment Act 3 of 1954 he gave up the possession over the land and his absence from possession is wilful and he has not filed any petition during his life time before the Tahsildar/ Mandal Revenue Officer for restoration of possession u/s 32 of the Act. Further u/s 19 (1)(a) as it stood before the Amendment Act 3 of 1954 on 4-2-1954 the tenant or protected tenant could simply surrender his rights even orally and without anything in writing.

In this regard the appellant has wrongly contended that according to Section 32, if the protected tenant on account of his being dispossessed otherwise than in the manner prescribed by the rules, the Tahsildar, may suo motu or on the application of the protected tenant holds summary enquiry and restore the possession to the protected tenant by eviction the land holder or any other person claiming through them. But there is no provision to take suo motu action by the Tahsildar u/s 32. It is the mandate of Section 38-E and explanation thereof

Further the appellant holding the provisions of Section 38-E contended that it shall be lawful for, the Tahsildar to restore the land to the protected tenant. In the present case the protected tenant was not conferred with ownership rights u/s 38-E as such the provisions thereunder will not apply to the appellant.

The learned Counsel for the appellant raised objection that permission u/s 47 and 48 obtained for sale of land by the pattedar has not been filed. The Counsel for the respondents stated that the permission was obtained. But he did not file proof. However the appellant has admitted the sale executed in favour of Madhava Rao, who has purchased 13-00 acres lands in Sy.No. 367 and 368 and the appellant under a compromise has not claimed even hereditary rights u/s 40 for the above 13-00 acres as contemplated in the Mandal Revenue Officer, procedgs No. D/ 1832/85 dated 25-8-1990.

In view of the above findings the appeal is dismissed."

9. Questioning the aforesaid orders of the Joint Collector dated 15-11-1997 confirming the order of the Mandal Revenue Officer dated 16-1-1993, the respondents herein filed the civil revision petition u/s 91 of the Tenancy Act in CRP No. 582/1998 before this Court. The learned single Judge of this Court by order dated 16-9-1999 allowed the revision and the orders of both the authorities - Mandal Revenue Officer, Saroornagar and the Joint Collector, Ranga Reddy District are set aside and the matter is remitted back to the lower appellate authority i.e., the Joint Collector, Ranga Reddy District for fresh consideration in accordance with law duly keeping in mind the observations made in the said civil revision petition and for passing appropriate orders thereof.

10. It is necessary to refer certain observations made in the said civil revision petition. It is observed that it is well settled law that once a certificate is issued

under Sections 35 and 37 of the Tenancy Act, it is conclusive evidence and such person in whose favour certificate is issued is a protected tenant. Unless the protected tenancy rights are surrendered in accordance with law u/s 19 of the Tenancy Act, he is entitled to claim the ownership rights over the said lands u/s 38-E of the Act. It is always open for the protected tenant to recover back possession u/s 32 even if he is dispossessed without force as per the Full Bench judgment of this Court in the case of Sada and Vs. The Tahsildar, Uttoor, Adilabad District and Another,, . The Full Bench further held that surrender u/s 19 does not result from mere absence from possession but it must have been a conscious relinquishment of a legal right. While that being the position of law on the point, both the authorities below held that the protected tenant in the instant case gave up the possession over the land orally in favour of the landholder before the amendment to Section 19(1)(a) came into force with effect from 4-2-1954. But the basis for coming to such a conclusion was not disclosed by either of them. The lower appellate authority, however, seemed to have placed reliance upon a pahani for the year 1953-54, which discloses the name of one Yelkonda Lingaiah as cultivator of the lands and so it was presumed that the petitioner might have surrendered the land orally. Except the pahani for the year 1953-54, there is no mention in the order about any other document nor any register which shows that Lingaiah was the cultivator in the year 1953-54 and he continued in possession even subsequently also. There is no documentary evidence, which shows that the protected tenant (father of the 1st respondent) gave up his possession. When a person is claiming protected tenancy rights under a certificate, which was issued under the provisions of the Tenancy Act, and when he is relying upon such certificate in support of his claim, the presumption is that he is the protected tenant under the Act and he need not prove such a certificate by adducing any evidence. The further presumption is that the tenant is holding the land as such, though he might have parted with physical possession and it is for the other person who is disputing such tenancy to prove that the protected tenant had surrendered his tenancy rights. It is further observed that in the instant case except stating that protected tenant had orally surrendered his rights prior to the amendment, the petitioners herein failed to establish the said allegation by filing any documentary proof. Be that as it may, for the very same year i.e., 1953, a Xerox copy of the pahani discloses that Katta Michel was the cultivator in respect of the lands but the Mandal Revenue Officer and the Joint Collector failed to make a reference to the above pahani in their orders. Apart from the above pahani for the year 1953, it is also observed that the petitioners herein also filed a number pahanies for the year 1949-50 including the pahanies for the years 1951-52 and 1953-54 till the year 1982-83. Both the authorities below have failed to make a reference to the above pahanies in their orders. But the authorities below have not seen the material documents and, therefore, the Court was not in a position to have a look at the various documents filed in the case. It is further observed that the protected tenancy certificate was issued on 26-8-1957. Even to the naked eye, it appears that the said certificate was issued on 26-8-1957. Since the handwriting

of the person who put date is not clear, it is not possible to presume that it was really issued in the year 1957; it may be even in the year 1951 also. This needs to be verified from the original record. Because the date of the certificate has got much relevance in this case. If it is found that the certificate is issued on 26-9-1957, i.e., after the coming into force of the amended Act 3 of 1954, the presumption would be that as on 26-9-1957, the respondents' father or the respondent were in possession of the land in which the question of their oral surrender as presumed by the lower appellate Court does not arise. If the surrender is prior to the amendment Act 3 of 1954, which came into force with effect from 4-2-1954, which is much prior to the issuance of the protected tenancy, such surrender, if any, must be done only in writing after that date. Without enquiring all these aspects, the authorities below rejected the claim of the petitioner summarily and in a most uncereemonious manner thereby causing great prejudice to the legitimate interest of the protected tenancy certificate holder. The authorities ought to have come to a definite conclusion with regard to the alleged surrender of the land and the said conclusion must be supported by the documents, which are placed on record, or the registers or records maintained by the authorities. The very approach of the authorities in deciding the case by solely relying upon the entries in the pahanies without even considering the validity of a certificate which is issued under Sections 35 and 37 of the Act and in casually concluding that the respondents (protected tenants) might have surrendered the land orally is unsustainable and unacceptable. Thus, observing the orders of both the authorities below were set aside and matter was remitted back to the lower appellate authority for fresh consideration in accordance with lay duly peeping in mind the aforesaid observations.

11. Pursuant to the said remand order, the Joint Collector, Ranga Reddy District, allowed the appeal of the respondents by the impugned proceedings dated 23-12-2000 in case No. F2/1040/2000 against which this civil revision petition is filed by the respondents therein.

12. The Joint Collector, Ranga Reddy District, based on the rival contentions and the documentary evidence available on record, considered the following issues:

1. Whether the respondents herein are the protected tenants in respect of the lands bearing Sy.Nos. 367, 368 and 369 situated at Nadargul village, Saroomagar Mandal, Ranga Reddy District?

2. Whether the respondents herein are entitled for restoration of possession u/s 32 (1) of the Tenancy Act?

13. To decide the aforesaid issues, both the parties herein have advanced their contentions elaborately with reference to certain documentary evidence and on the aforesaid contentions, the Joint Collector, held that as could be seen from the pahanies for the years 1951-52 and 1953 Ex.B2 and A4, clearly show that the ancestors of the respondents were in possession of the aforesaid lands and the name of Michel S/o. Arlaiah was recorded as protected tenant. He was occupant

and in possession of the said lands prior to 1954. In the instant case, there is no evidence to the effect that the protected tenant has surrendered his rights before the Tahsildar in writing. There is no documentary evidence adduced by the petitioners herein that Smt. Vidya Mashalkar purchased the said lands after obtaining permission under Sections 47 and 48 of the Tenancy Act. Even assuming that such permission was obtained that will not supersede the statutory rights conferred under Sections 32 and 38 of the Tenancy Act. The alienation made in favour of Smt. Vidya Mashalkar is contrary to the provisions of Section 38-D of the Tenancy Act. The said section specifically provides that if the landholder at any time intends to sell the land held by the protected tenant, the landholder 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 the receipt of such notice. The respondents herein have produced the proceedings No. D/ 1832/1985 dated 25-3-1990 relating to grant of succession of protected tenancy rights u/s 40 of the Tenancy Act and in the said proceedings the 1st respondent herein observed that K. Sowraiah has filed before the Mandal Revenue Officer, Saroomagar for grant of a succession of the protected tenancy rights u/s 40 of the Tenancy Act right claiming to be the lone legal heir of the deceased protected tenant - late Katta Michel. A notification was issued calling for the objections, if any, and the notices were also served on the interested parties. In pursuance of the said notice issued by the Mandal Revenue Officer, the father of the petitioners herein (Babaiah), one N.S. Madhava Rao and Lucas appeared in person and obtained time for filing counter and documents in support of their case. From the above pleadings, it is clear that N.S. Madhava Rao filed a compromise petition for an extent of Ac. 13-00 and the said compromise was recorded and the case against N.S. Madhava Rao was dismissed to an extent of Ac. 13-00 by the Mandal Revenue Officer and as the father of the petitioners herein (Babaiah) and Lucas did not file any counter nor prosecuted the case and due to their absence, they were set ex parte. After verifying the tenancy records and after conducting local enquiry, the Mandal Revenue Officer, Saroomagar, granted the Succession Certificate u/s 40 of the Tenancy Act declaring Katta Sowraiah - 1st respondent herein who is the father of the respondents 2 to 4 herein as the lone legal heir and successor of the original protected tenant - Katta Michel in respect of the said land bearing Sy.Nos. 367, 368 and 369 situated at Nadargul Village, Saroomagar Mandal, Ranga Reddy District. The petitioners herein have not taken the plea of the oral surrender in the said proceedings u/s 40 before the Mandal Revenue Officer. The petitioners herein have not challenged the said orders of the Mandal Revenue Officer granting succession u/s 40 of the Tenancy Act. The Joint Collector disbelieved the contentions of the petitioners herein that the protected tenant has orally surrendered his tenancy rights prior to the year 1954. The said conclusions were arrived at based on the independent enquiry and also based on the corroborated evidence.

14. The lower appellate authority also considered the order of the Assistant Collector, Hyderabad East Division in proceedings No. H/9182/71 dated 27-1-1974 wherein N.S. Madhava Rao and Smt. Vidya Mashaikar - vendor of Babaiah (father of the petitioners herein) filed a petition under notification No. 129-A to correct the entries in the final record of tenancy. On said petition, the Assistant Collector in the order dated 27-8-1974 observed that on perusal of the Tenancy Register (Ex.B2) clearly shows that there is only one protected tenant over the suit lands and deletion of his name from the tenancy record will amount to cancellation of the tenancy and not mere correction of the entries. The said order of the Assistant Collector dated 27-8-1974 was not challenged before any forum and the said order has attained finality and, therefore, it cannot be said that the protected tenant has surrendered his protected tenancy rights prior to the year 1974. Had there been such surrender of tenancy rights, the vendor of Smt. Vidya Mashaikar would not have filed a petition before the Assistant Collector for correction of the entries in the tenancy record under the notification No. 129, A-3, 1047 - 55-56 dated 4-2-1956 read with Sections 97, 35 and 37 of the Tenancy Act. The Joint Collector observed that due to efflux of time, the registers containing the issue of the Tenancy Certificate under Sections 35 and 37 of the Act is not traceable. But, however, from the perusal of the tenancy certificate issued in the year 1957, Ex.B2 and Ex.A4 i.e., pahani for the year 1951-52 and 1953 clearly shows that the father of the 1st respondent namely, Katta Michel was in possession of the aforesaid lands. It is well settled law of the proposition that once a certificate was issued in favour of a particular person as prescribed under Sections 35 and 37 of the Act, it becomes final and it is conclusive evidence that such a person in whose favour such certificate issued is a protected tenant and he is entitled to take delivery of the said lands. The protected tenancy certificate issued in favour of the protected tenant has never been challenged by the original pattedar (Shaik Alladdin) or by his legal heirs. The so-called vendee - Smt. Vidya Mashaikar filed a petition for correction and deletion of the protected tenant's name from the Tenancy Register has been dismissed by the Assistant Collector in his proceedings No. H/9182/71 dated 27-8-1974 and the said order has become final as the same was not questioned. The lower appellate authority has come to a definite conclusion that the protected tenant has not surrendered his tenancy rights prior to the year 1954 in respect of the said lands and the respondents herein are entitled for restoration of possession u/s 32(1) of the Tenancy Act. Accordingly, the orders of the Mandal Revenue Officer dated 16-1-1993 are set aside and the appeal is allowed. The Mandal Revenue Officer, Saroornagar was directed for delivery of possession of the said lands in favour of the respondents herein by the impugned order dated 23-12-2000.

15. It is an admitted fact that the landholder was Shaik Alladdin. It is also an admitted fact that as per the record of pahani patrika of Nadargul Village for the year 1951-52, Katta Michel was the cultivating tenant and his name was recorded as a tenant. The petitioners herein also filed pahani patrika for the year

1953-54 according to which Shaik Alladdin was the landholder and one Yelkonda Lingaiah was shown as tenant. As per the sale deed dated 2-12-1965 (Ex.B30), the land was sold by Mohammed Jamaluddin and Mohammed Imamuddin sons of late Mohammed Alladdin. It is not stated in the sale deed as to how the said sons of late Mohammed Alladdin acquired the ownership. It is also not stated as to whether the said Mohammed Alladdin was the landholder of the said lands. According to the documents filed by the petitioners themselves one Shaik Alladdin was the landholder but not Mohammed Alladdin. Admittedly, the said vendors have not obtained any permission under Sections 47 and 48 for the transfer of the said lands in favour of Smt. Vidya Mashalkar. Sections 47 and 48 were omitted by Act 12 of 1969 and prior to the said period 1969 there cannot be any transfer of the agricultural lands without obtaining prior permission as contemplated under Sections 47 and 48 of the Act. Therefore, it is also doubtful from the very sale deed dated 2-12-1965 produced by the petitioners as to whether there was any transfer of the said lands by Shaik Alladdin's sons (original landholder). Sons of Mohammed, Alladdin have executed the sale deed but not by Shaik Alladdin. When Smt. Vidya Mashalkar is not legally entitled to purchase the said lands, the sale deed executed by her in favour of Chippa (Sala) Babaiah (father of the petitioners) is of no consequence.

16. The respondents herein have filed copy of the tenancy register prepared in the year 1950-51 under exhibit which finds place in the Succession Certificate granted in Case No. D/1832/85 in which the name of Shaik Alladdin is shown as the landholder at Column No. 7 and the name of Katta Michel S/o. Arlaiah is shown at Column No. 9 as a tenant. The said proceedings of the Mandal Revenue Officer, Saroornagar, u/s 40 also discloses that he has verified the records and on perusal of the same, the pattedar - Shaik Alladdin never cultivated the lands personally but Katta Michel S/o. Arlaiah was personally cultivating the lands and his name was recorded in the tenancy record as protected tenant basing on his possession in the year 1950-51. Accordingly, Succession Certificate was issued in favour of Katta Sowraiah S/o. late Katta Michel u/s 40 of the Tenancy Act in respect of Ac.32-07 gts. The respondents also filed a certificate issued under Sections 35 and 37 of the Tenancy Act showing that the tenancy certificate was issued in favour of Katta Michel S/o Arlaiah at Sy.No. 27 of Nadargul Village, Hyderabad East Taluq in respect of the said lands. The pahani for the year 1953 (Ex.B3) discloses that Katta Michel was the tenant in respect of the said lands. It is to be seen that certain persons are entitled to be declared as protected tenants under Sections 34, 37 and 37-A of the Act. The Full Bench of this Court in *Sada v. Tahsildar, Utnoor* (supra) elaborately considered under what circumstances the protected tenancy certificates have to be issued. It is held that u/s 34, a person shall be deemed to be a protected tenant if he (a) has held such land continuously--

(i) for a period of not less than six years, being a period wholly including in Fasli years 1342 to 1352 (both years inclusive) or

(ii) for a period of not less than six years immediately preceding the 1st day of January, 1948 or;

(iii) for a period of not less than six years commencing not earlier than 6-10-1943 and completed before the commencement of the Act, and .

(b) has cultivated such land personally during such period.

17. The protected tenancy u/s 34 has to be given u/s 35 by the Tahsildar. If any question arises in that behalf, the landholder or any person deemed to be the tenant may apply within one year of the commencement of the Act to the Tahsildar who may then give necessary declaration as to whether a person is a protected tenant or not. u/s 35(2) of the Tenancy Act, any declaration as to the protected tenancy given by the Tahsildar is conclusive and final.

18. Section 37 deals another category of protected tenants. These are persons who hold the land as tenants at the commencement of the main Act, which came into force w.e.f. 10-6-1950, provided no other person was declared as a protected tenant u/s 34 are also entitled to protected tenancy certificate. u/s 37 every person who at the commencement of the Tenancy Act holds as a tenant, any land in respect of which no one is declared as protected tenant u/s 34 shall be a protected tenant in respect of such lands. Here is a specific case of the respondents that Katta Michel S/o. Arlaiah was a tenant as shown in the revenue records when the Act came into force with effect from 10-6-1950 and, therefore, the possession of Katta Michel S/o. Arlaiah in the year 1950 itself is enough for his entitlement as a protected tenant and, therefore, he was a protected tenant u/s 37 of the Tenancy Act and accordingly his name was rightly entered in the Protected Tenancy Register. We are not concerned with the protected tenancy u/s 37-A of the Act according to which the persons holding the land as tenants at the commencement of the Act Amending Act of 1955 are also deemed to be the protected tenants.

19. It is thus submitted that Katta Michel was in possession as tenant in the year 1950 entitling him to be declared as a protected tenant u/s 34. He need not be in possession much prior to the year 1950. It is the specific case of the respondents that Katta Michel was the cultivating tenant in the year 1950 and, therefore, he is a protected tenant u/s 37 of the Tenancy Act and one year cultivation during the year 1950 is enough to declare him as a protected tenant u/s 37 of the Tenancy Act. It is further stated that there is no contra evidence to show that Katta Michel S/o. Arlaiah was not the tenant in the year 1950-51. According to the Protected Tenancy Register for the year 1950-51, the name of the Katta Michel was shown as a protected tenant and even according to the pahani filed by the petitioners herein for the year 1951-52 (Ex.B2) the name of Katta Michel was shown as a tenant in respect of the said lands. Pahani for the year 1953 also produced by the respondents herein before the lower authorities clearly discloses that Katta Michel was the tenant in respect of the said lands. Therefore, it is the contention of the learned Counsel for the respondents that there was no need or

necessity on the part of the respondents to prove that Katta Michel was in possession much prior to 1950 or after 1955 and it is enough to show that Katta Michel was a tenant in the year 1950 when the Act came into force and his name was entered in the Protected Tenancy Register and the certificate under Sections 35 and 37 was also issued by the Tahsildar and the said certificate has become final and not questioned.

20. It is further stated that as per observations made by this Court in the earlier CRP No. 582/1998 dated 16-9-1999, the Joint Collector has examined all the relevant documents and rightly came to the conclusion that Katta Michel was the protected tenant and there was no oral surrender of tenancy rights by him and the respondents are entitled for the deliver of the said lands. It is further stated that in fact the petitioners herein filed review CMP No. 2543/1999 to review the order in CRP No. 582/1998 but the said review application was dismissed by order dated 9-12-1999.

21. The learned Counsel for the respondents further submitted that Succession Certificate granted by the Mandal Revenue Officer in Case D/1 832/85 dated 25-8-1990 (Ex.A1) clearly discloses that notices were served on the father of the petitioners herein namely, Sala (Chippa) Babaiah S/o. Ramulu and N.S. Madhava Rao and Lucas. They have not filed any counter in respect of grant of several adjournments. The N.S. Madhava Rao entered into compromise with the 1st respondent - Katta Sowraiah S/o. Katta Michel and the said compromise was recorded. The father of the petitioners herein did not choose to appear either in person or through an advocate and they have not filed any document and they have not filed any counter and, therefore, the contention of the petitioner that no notice was issued to the father of the petitioner before grant of Succession Certificate is incorrect. The said order discloses that the Mandal Revenue Officer verified the record and on perusal of the record, he came to conclusion that Katta Michel S/o. Arlaiah was personally cultivating the land and his name was recorded in the tenancy record as protected tenant basing on his possession in the year 1950-51.

22. The learned Counsel for the petitioners submits that observation of the Collector that the registers relating to the issue of the tenancy certificate u/s 35 and 37 is not traceable is incorrect, as pursuant to the orders of this Court, the Mandal Revenue Officer, Saroomagar traced the records relating to protected tenants situated Nadargul village and same was seen and on a perusal of the same, page 5 relating to the said land is missing and, therefore, it cannot be said that there was an entry in the Protected Tenancy Register showing the name of Katta Michel as a protected tenant. In reply to the said contention, the learned Counsel for the respondents submits that tampering of the said record relating to the Protected Tenancy Register by vested interest person will not make any difference to come to a definite conclusion that Katta Michel was a protected tenant as it is supported by the abundant evidence available on record. It is stated that for the proceedings of the granting Succession Certificate to the 1st

respondent (father of the petitioners) was also a party and the records was verified and the then only Mandal Revenue Officer found that the name of Katta Michel was entered into Protected Tenancy Register based on his personal cultivation in the year 1950-51.

23. It is pertinent to note that N.S. Madhava Rao and Mrs. Vidya Mashalkar (vendors of the petitioners' father) filed a petition under G.O.129-A-3.1047 - 55-56 (3) read with Sections 97, 35 and 37 of the Tenancy Act to delete the name of Katta Michel S/o. Arlaiah as protected tenant. In the said petition, they have stated that they have purchased the lands and themselves and their predecessors are owners for the last 15 years or more. It is stated that they have discovered the name of Katta Michel entered by mistake in the final Tenancy Register and, therefore, they are filing the said petition for correction of the same. The said petition was filed on 22-12-1971 before the Revenue Divisional Officer - Sub-Collector, Hyderabad East. Notice was ordered in the said petition. The Sub-Collector called for the original connected records of Nadargul village. The original records were sent by the Tahsildar East, Hyderabad relating to the Protected Tenancy Register of Nadargul Village. Receipt of the Protected Tenancy Register is also acknowledged by the Sub Collector, Hyderabad East vide his D.O. letter No. H/ 9182/71 dated 22-6-1972. It is stated in the said D.O. letter dated 22-6-1972 by the Sub-Collector, Hyderabad East that the Protected Tenancy Register of Nadargul village received through the reference cited and he has acknowledged the same. Further the Tahsildar East Hyderabad directed to send a detailed report on the contention of the petitioner. In reply to the same, the Tahsildar, Hyderabad East vide his D.O. letter No. B 1/3963/72 dated 24-6-1972 stated as follows:

"I submit that there is no case is pending pertaining to the above subject except the Final Tenancy Register of the village which was not sent to the Sub-Collector through reference supra (vide letter No. B 1/86/72 dated 4-4-1972 of the Tahsildar East) and acknowledged on 4-4-1972;

24. In the said file certified copy of the Tenancy Register Part-I (First Part of Nadargul village, Hyderabad, East Taluq of Hyderabad District) is available and according to the said Tenancy Register the name of Katta Michel S/o.Arlaiah is recorded as protected tenant. In the said application filed by N.S. Madhava Rao and Smt.Vidya Mashalkar, a detailed enquiry has been made by the Assistant Collector, Hyderabad East Division. Admittedly, no notice was issued to Katta Michel on the said application as he was no more by the time when the application was filed in 1971. It is the case of the respondents that Katta Michel died long prior to 1971 and obviously a report was sent stating that Katta Michel was not living in the village and on the said report of the Tahsildar dated 18-1-1974 Katta Michel was set ex parte on and considered the case of N.S. Madhava Rao and Smt. Vidya Mashalkar. It is stated in the said proceedings in No. H/9182/71 dated 27-8-1974 that the petitioners (N.S. Madhava Rao and Smt. Vidya Mashalkar) have failed to produce any evidence in support of their

contention that they have purchased the said suit lands from the heirs of Shaik Alladdin. They have not filed any supporting evidence in support of the contention of their case and in any case under the Tenancy Act the mere fact that a protected tenant is not in possession does not give any right to the landholders to resume the land unless it has been reserved for resumption by him. A perusal of the Tenancy Register (Ex.P2) clearly shows that there is only one Protected Tenancy Register on the suit land and deletion of his name from the Tenancy record will amount to cancellation of the tenancy and not mere correction of entries. Further under Rule 24 of the Rules issued under Notification (Revenue) No. 41 dated 17-8-1950 the abstract of the Tenancy Register with effect from 10-6-1951 shall be deemed to be final record of tenancy and the same has not been challenged. Accordingly, the application filed by them to delete the name of Katta Michel was dismissed by order dated 27-8-1974. The said order has become final and the same has not been questioned.

25. 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 u/s 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 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 u/s 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.

26. The contention of the petitioners that there was an oral surrender has been rightly disbelieved by the lower appellate authority based on the evidence available on record. I do not see any illegality or irregularity in the said finding of the lower appellate authority. Merely because Smt. Vidya Mashalkar declared the said lands in her land ceiling holding she cannot get any legal right and title over the said lands as per the provisions of the Tenancy Act. Tenancy Act is a special enactment and it prevails over other enactment as contemplated u/s 104 of the Tenancy Act.

27. For the aforesaid reasons, I do not see any merits in any of the contentions advanced on behalf of the petitioners and the lower appellate authority elaborately considered the rival contentions of either parties as observed by this Court in aforesaid earlier civil revision petition and rightly exercised the jurisdiction vested in him and I do not find any illegality or irregularity committed by the lower appellate authority. I, therefore, do not see any merits in the civil revision petition and it is accordingly dismissed. There shall be no order as to costs.