

(1979) 04 AP CK 0002

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 385, 2629, 3287, 3288 of 1978 and Civil Miscellaneous Petition No. 1523 of 1979

C.V. Narayan Reddy

APPELLANT

Vs

Katanguru Raghava Reddy and Another

RESPONDENT

Date of Decision : 10-04-1979

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 47, 50

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 3(1)

Transfer of Property Act, 1882 — Section 53

Citation : AIR 1980 AP 89

Hon'ble Judges : C. Kondiah, C.J; Seetharama Reddy, J

Bench : Division Bench

Advocate : C. Anandarao, for the Appellant; K. Pratap Reddy and B. Subhashan Reddi, for Industries, for the Respondent

Judgement

1 to 3. In this batch of four Civil Revision petitions common questions of law which are not only important but rather complex, do arise. This complexity is reinforced by the fact that varied views have been expressed in a catena of decisions by this Court, which apparently seemed to be conflicting and one is likely to be led into a labyrinth. No wonder our learned brother Jayachandra Reddy, J. despite the fact that he being a party to one of the Division Bench Judgments in Meram Pocham and Another Vs. The Agent to the State Government, (Collector), District Adilabad and Others, wherein in some respects the points raised not being quite dissimilar to the one raised herein, felt and very rightly so in our view that points raised in this batch may be decided by a Division Bench and therefore has chosen to refer the matter to a Division Bench.

4. The facts in brief are the revision petitioners who are holding agricultural lands, were required to declare their holdings for determination as to whether they have any surplus land within the meaning of the Andhra Pradesh Land

Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as the "Ceiling Act"). The petitioners, being the owners of certain extents of land, had either alienated under unregistered sale deeds and the alienees were put in possession, or had under agreements of sale put the purchasers in possession of the land more than 12 years ago. Therefore, while filing the declarations they did not show these extents on the ground that they are not holding the land within the meaning of Section 3 (1) of the Ceiling Act and in any case there was part performance of the contract and consequently Section 53-A of the Transfer of Property Act will come into play and, therefore could be invoked for the purpose of exclusion of these lands from their holdings. The respondent's case as advanced before the lower Tribunals was that these lands were either alienated or the agreements were entered into for sale at a time when Section 47 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the "Tenancy Act") was in vogue and alienation could not have been made without obtaining the permission from the Government. Since the purported alienations or agreements of sale are invalid and unlawful, neither Section 53-A of the Transfer of property Act nor Section 3 (1) of the Ceiling Act are of any avail to the petitioners. So the said lands are to be included in the holdings of the petitioners. Respondent's case found favour with the lower Tribunals. Hence the revisions.

5. The crucial and the most important question that arises is whether or not the agreements of sale regarding the land under dispute, are valid and legal for not obtaining either the permission u/s 47 of the Tenancy Act of validation certificate u/s 50-B of the Tenancy Act and consequently the petitioners are not entitled to invoke Section 53-A of the Transfer of property Act. Secondly, whether the petitioners are "holders" of the land in dispute and therefore the land so held be treated as a "holding", within the meaning of Ceiling Act.

6. Before dealing with the first question a short resume of the material and the provisions of the relevant sections of the Tenancy Act is necessary. The Hyderabad Tenancy Act (which is now termed Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act) was passed in 1950, one of its objects being to regulate the alienations of agricultural lands, Chapter V relates to restrictions on transfer of Agricultural lands. Section 47, as it was originally made (this section was subsequently amended and later deleted) provided that "notwithstanding anything contained in any other law for the time being in force or in any decree or order of a Court, no permanent alienation and no other transfer of agricultural land shall be valid unless it has been made with the previous sanction of the Tahsildar". Sub-section (2) lays down the procedure and Sections 48 and 49 stipulate certain restrictions on the grant if such sanction. The expression "Permanent alienation" was defined under Sec. 2. (o) as including "any sale, exchange or gift and any transfer of a right of occupancy or of the patta of a holding but does not include any disposition by will". However, the word "transfer" as such was not defined in the Act.

7. By Act 6 of 1964 a new Section viz. Section 50-B was inserted in the Act for the purpose of "validation of certain alienations and other transfers of Agricultural Lands". By Act 12 of 1969, which came into being on 18th March, 1969, sub-section (1) of Section 50-B was substituted and a proviso was added to sub-section (2). However, by the same Act 12/69 and with effect from 18th March, 1969, Sections 47, 48, 49, 50 and 50-A of the Act were deleted. Sub-section (1) of Section 50-B when it was originally enacted, laid down that notwithstanding anything in the chapter where any alienation or other transfer of agricultural land took place on or after 10th June, 1950 but before the 21st of February 1961 and where possession of such land was given to the alienee or transferee before the 21st February, 1961, he may within one year from such date as may be prescribed, apply to the Tahsildar for a certificate declaring that such alienation or transfer is valid.

8. Sub-section (2) of Section 2 of Act 12 of 1969 provided for the procedure which should be adopted on receipt of an application as contemplated by sub-section 91). It requires the Tahsildar to make such inquiry as may be prescribed and if he was satisfied that the consideration, if any, payable to the alienor or transferor has been paid or has been deposited within such time and in such manner as may be prescribed, he shall require the alienee or the transferee to deposit in the office of the Tahsildar an amount equal to the registration fees and the stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Indian Registration Act, 1908. The said sub-section proceeds to lay down that on the deposit of such amount, the Tahsildar shall issue a certificate to the alienee or the transferee declaring that the alienation or transfer is valid and such certificate shall, notwithstanding anything in the Indian Registration Act, 1908 be conclusive evidence of such alienation or transfer as against the alienor or transferor or any person claiming interest under him. Sub-section (3), however, stated that the validation of any alienation or transfer of land under sub-section (2) shall not affect the right accrued to any person u/s 37-A or Section 38 or Section 38-E.

9. It shall be noted here that Act 11 of 1965 substituted the words "within three years from such date as may be prescribed" for the original words "within one year from such date as may be prescribed". Act 12 of 1969 extended the said period for four years and Act 19 of 1969 for six years. Finally, the benefit of validation conferred by Section 50-B ended with 31st of March 1972. Thereafter, there was no possibility of getting the alienations validated.

10. To nutshellise, Sections 47 and 50-B of the Tenancy Act co-existed from 1964 to 1969 and in 1969 Section 47 along with certain other provisions was deleted and only Section 50-B remained on the statute book. Eventually, the benefit of Section 50-B was extended up to 31st March 1972.

11. Sri. K. Ptatap Reddy, the learned counsel for the petitioners, contends that Section 53-A of the Transfer of property Act can be availed of in a case where

possession of Immovable property is given in pursuance of agreement of sale, even if the agreement of sale is conditioned by the prior permission to be obtained from the State. He relied on a Supreme Court decision in *Mrs. Chandnee Widya Vati Madden Vs. Dr. C.L. Katial and Others*, . In this case, plaintiffs entered into a contract of sale of a house belonging to the defendant on the plot granted by the Government. One of the terms of the contract was the vendor shall obtain necessary permission of the Government for the sale within two months of the agreement and if the permission was not forthcoming within this time, it was open to the vendee to extend the date or to treat the agreement as cancelled. the vendor made an application for permission but for some reason withdraw the same. In the suit filed by the vendees for specific performance of the contract or in the alternative for damages, it was found that the vendees were always willing and ready to perform their part of the contract, that it was the vendor who willfully refused to perform her part of contract and that the time was not of the essence of the contract. The Supreme Court held that the contract was not a contingent contract and that the parties had agreed to bind themselves by the terms of the document executed between them. The Court had got to enforce the terms of the contract and to enjoin upon the vendor to make the necessary application for permission. In the event of permission being refused, the vendees shall be entitled to the damages.

12. He also relied on the following decisions: *Nathulal Vs. Phoolchand*, . This was a case where u/s 70 (4) of the Madhya Bhart Land Revenue and Tenancy Act 66 of 1950, the agricultural land was sold to a non-agriculturist which was prohibited or which could not have been sold without the sanction of the State Government, under S. 70 (4) of the Madhya Bharat Land Revenue and Tenancy Act, 1950.

13. Dealing with the aforesaid situation, the Supreme Court held:-

"In the absence of any specific clause dealing with this matter, a condition that Nathulal will secure the sanction under S. 70 (4) after paying the appropriate fee must be implied, for it is well settled that where by statute property is not transferable without the permission of the authority an agreement to transfer the property must be deemed subject to the implied condition that the transferor will obtain the sanction of the authority concerned."

14. In *Hafeezunnisa Begum v. Syed Arab*, (1969 2 AWR 317)*, Parthasarathi, J., while dealing with Ss. 47 and 50-b of the Tenancy Act. held that ss. 47 to 49 are inapplicable to the case of transfers specified in S. 50-B.

15. A Division Bench of this Court, in *Lachamma v. Chinnavenkata Reddy*, (ILR (1974) AP 119), Similarly held that, since S. 47 is deleted, the obstruction stands removed and the obstruction stands removed and the statutory defence of s. 53-A would be available. This Bench relied on a ratio laid down by a Division Bench of this Court in *Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others*, . Similar is the view of Venkatarama Sastry, J. in *S. A. Gaffer v. K. Sayanna* (1974

1 APLJ 316).

16. Reliance was also placed on a decision of this Court in K. Parvathamma Vs. The Commissioner of Excise (Board of Revenue), Govt. of Andhra Pradesh, Hyderabad and Others, , wherein a Full Bench of this Court held:

"The result of our decision is that prior sanction u/s 47 is required only before the sale is confirmed under Sec. 138 of the Land Revenue Act. By virtue of the order of stay passed by this Court, the revenue sale in favour of the purchaser has not yet been confirmed. But it has to be noted that in view of the recent legislation viz., Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act. (Third Amendment Act 12 of 1969) which came into force on 18-3-1969, S. 47 and the other connected provisions of the main Act have been omitted with the result that no sanction is at all necessary before confirming the sale in favour of the 5th respondent."

17. The learned counsel for the petitioner, while pursuing the matter further, in support of the contention that S. 47 is not a total bar or a prohibition referred to a Division Bench decision of this Court in M. Pocham v. Agent to the State Government, Adilabad (supra) and referred to the following paras in the said judgment:

"19Why we say that such situation does not exist in these cases particularly is that S. 47 was deleted in 1969 and the Regulation relating to the prohibition of alienations of lands in the Scheduled Areas by Tribals came to be applied to the Telangana Area on 1-12-1963 which was long before S. 47 was removed from the statute book. Even if it were to be argued that the removal of S. 47 would automatically validate the invalid alienations and transfers, the insurmountable hurdle in the way of the petitioners would arise in the form of the Regulation which came to be applied to their lands even on 1-12-1963.

It is a moot point whether after the Regulation came into force on 1-12-1963 and before S. 47 was deleted in 1969 permission could be obtained for transfer in respect of these lands in the Scheduled Areas in view of S. 3 of the Regulations. However, we do not express any view on this point since it is not necessary to do so in these cases. The admitted fact remains that no attempt has been made either by the petitioners or their alienors for securing the required permission under S. 47 even after 1-12-1963 and before S. 47 was deleted.

22. To our minds, it necessarily follows that if the transferee or alienee did not avail himself of this opportunity of getting his alienation and possession validated under S. 50-B, he should suffer the consequences, since the transfer and delivery of possession in his favour remained invalid and unlawful. It is necessary for us, as we have already pointed out, to decide whether the three petitioners before us could apply for validation under S. 50-B, in view of the Regulation which came to be applied to their areas on and from 1-12-1963. It is common ground that no applications have been made by the petitioners for validation u/s 50-B.

36. The Full Bench decision in K. Parvathamma Vs. The Commissioner of Excise (Board of Revenue), Govt. of Andhra Pradesh, Hyderabad and Others, dealt with a case of revenue sale. The Full Bench held that even for revenue sales sanction under S. 47 before the amendment of 1969 was required before confirmation of such sales. We see nothing in this decision which is different from what the above decision, the further question of the validity of the transfer and possession as per the Regulation did not arise."

And argued that what actually fell for their Lordships' consideration in this case was whether S. 3 of the Andhra Pradesh Scheduled Areas Land Transfer Regulation of 1959, which was extended to Telangana area on 1-12-1963 was a bar to any alienation of agricultural lands in Scheduled Areas by tribals in favour of non-tribals and therefore any such contracts of sale without permission under S. 47 were not valid and legal and consequently the regular sale deeds taken on and from 1-12-1963 by the petitioners in that case who were non-tribals from the tribal vendors without securing validation of alienation under S. 50-B of the Hyderabad Tenancy Act, could be a valid transaction subsequent to the expiry of the period on which validation certificate under S. 50-B could have been obtained i.e., 18th March 1972. Therefore, the learned counsel submitted that their Lordships in their decision were only concerned with S. 3 of the Regulation and any observation or ratio laid down therein cannot be extended to or relied on for the purpose of decision of the case before us.

18. It was further submitted by the learned counsel for the petitioners that the decisions in Nathulal v. Phoolchand (supra) and Mrs. Chandnee Widyavati v. Dr. c. L. Kayial (supra) which are binding on this Court, are not distinguishable.

19. The learned counsel, while again dealing with the observations made in para 29 of the said judgment, submits that the Division Bench was straining the language while extending the ratio as laid down by the decisions in Syed Jalal v. Targopal (supra) and Lachamma v. Chinna Venkata Reddy (supra). Both the aforesaid decisions made it clear that the possession of the transferee after the deletion of S. 47 is lawful and it was further categorically confirmed and laid down by the Full Bench decision in K. Parvathamma V. Excise Commr. (supra). But the Division Bench while referring to the said Full Bench decision, lost sight of an important observation which goes to the root of the matter viz., "S. 47 and the connected main provisions are omitted with the result that no sanction is at all necessary before confirming the sale in favour of the 5th respondent."

20. What emerges from the above, the learned counsel for the petitioner submits, is that the permission under S. 47 of the Tenancy Act is not necessary at a time when the agreement of sale is entered into. It is only necessary at the time of registration of the sale deed..... Secondly, subsequent to the deletion of Sec. 47, no permission need be obtained for finalisation of sale deeds with regard to these agreements of sale entered into prior to 18-3-1969. All those agreements of sale entered into prior to 18-3-19969 will be deemed to be valid, legal and authorised once and they do not remain invalid or illegal or

unauthorised, even after 31- 3- 1972, when the so-called benefit of validation contemplated under S. 50- B ended.

21. The learned Government pleader contended that the permission contemplated under S. 47 of the Tenancy Act with regard to all those alienations under agreements of sale prior to 18-3- 1969 is not only necessary prior to the said date, but continues to be so even thereafter and all those sales can never be treated as authorised, valid or legal, if the transactions are not validated by obtaining certificate under S. 50- B of the Tenancy Act, which benefit was extended right up to 31st March 1972. The infirmity of the validity shall continue thereafter and there is nothing that could come to the rescue of the petitioners so that the said transaction could be treated as valid even for the purpose of S. 53- A of the Transfer of property Act because the possession which continued to be in the hands of the alienees under agreements of sale will continue to suffer from invalidity and therefore S. 53- A will not be available. The learned Government pleader relied on the following two decisions in support of his proposition. In *Syed Jalal v. Targopal* (supra) the Division Bench observed as under:

"But having regard to the provisions of S. 47 read with S. 98, in the view we have taken, no right to possession capable of being upheld under the special enactment can be conferred by means of a permanent alienation or other transfer, unless the prior permission of the Tahsildar is obtained.

* * * * * Though the contract is lawful, as in deed we have held it so, since possession without the prior sanction of the Tahsildar cannot be regarded as authorised under S. 98, the remedy of section 53- A will not be available."

The next case which the learned Government pleader relied on in *M. Pocham v. Agent to the state Govt, Adilabad* (supra). He relied on the following paras:-

"17. These three pronouncements of the Division Benches of this court support the view we have expressed above that the possession given to the three petitioners in pursuance of the contracts of sale, without obtaining previous T. P. Act would not safeguard that possession.

23..... Those who did not apply under S. 50 - B up to 31st March 1972 would reap the result of having an invalid transfer and delivery of possession on their hands. The Legislature's refusal to extend the time beyond 31st March 1972 does not validate the on valid transfer and delivery of possessions.

29..... Since there was possibility in that case for securing the permission and thus complying with s. 70 (4) of the Madhya Bharat law, S. 53 - A was presumably held to safeguard the possession of the transferee. But, in the instant cases, the possibility of securing the sanction came to an end on 31st of March, 1972. Afterwards there was no possibility of validating the sale transactions:

32. What is more, the lands which are purported to have been transferred in

these three cases, are situate in schedule areas, the transfer of which by tribals to non- tribals was prohibited on and from 1-12- 1963 in the Telangana region. The circumstances also did not exist in the Supreme Court's case. Therefore, while following the principle laid down by the Supreme court in Nathulal Vs. Phoolchand, we find nothing in that decision which goes contrary to the view we have expressed.";

and submitted that though the case primarily pertained to S. 3 of the Regulation, nevertheless their Lordships also dealt with Ss. 47 and 50- B vis-a-vis the alienation of agricultural lands and held that while enacting S. 50- B of the Tenancy Act, the legislature kept in view the provisions of S. 53-A of the Transfer of property Act. Therefore, even if delivery of possession in pursuance of the contract of sale was invalid and unlawful on account of the failure to secure the permission under S, 47, such possession and transfer could be validated u/s 50- B. Therefore, it necessarily followed that if the transferee or alienee die not avail himself of that opportunity of getting his alienation and possession validated under S. 50- B, he should suffer the consequences, since the transfer remained invalid and unlawful. The learned Government pleader further submitted that the Bench decision very rightly distinguished the judgement reported in Nathulal v. Phoolchand (supra).

22. The question, therefore, on the conspectus of material and events enumerated above, that arise for determination in the main is, whether, in Telangana Area, the contracts of sale followed by possession given to the alienee or transferee are valid and lawful in view of Ss. 47 and 50-B of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, without obtaining any permission under S. 47 or without any certificate of validation under S. 50- B of the said Act and thereby enables the alienee of transferee to avail the provisions of S. 53- A of the Transfer of property Act and is thus liable for inclusion in the land held by the alienee or transferee for the purpose of declaration under the Andhra Pradesh land Reforms (Ceiling on Agricultural Holdings) Act, 1973. Indubitably under S. 47 of the Tenancy Act, no permanent alienation and no other transfer of agricultural land shall be valid unless it has been made with the previous permission of the Tahsildar. This position continued up to 1969. Despite the existence of this provision on the statute book thousands of cases of alienations under agreements of sale were brought about and the Legislature having noticed this fact, amended the Act in 1964 by inserting S. 50- B, making a provision for validation of certain alienations and other transfers of agricultural lands. Thereafter by Act 12 of 1969, this S. 50- B, the benefit of which was extended eventually up to 31- 3- 1972. Though time and again extension of the benefit of s. 50- B was made and the final one being up to 31- 3- 1972 yet thousands of cases remained without availing the procedure of validation under S. 50- B. However, subsequent to 1969 no permission for alienation of agricultural lands was required and the alienees and transferees have lands ever since.

23. In the cases before us, the petitioners though owners of the lands, have entered into agreements of sale and in pursuance thereof have given the possession of the said lands since about 1960 and the alienees and transferees are enjoying the possession of the said lands ever since. Admittedly, no permission was obtained under S. 47 of the Tenancy Act, which was in force at the time of agreement of sale, nor any validation certificate, as contemplated under S. 50- B was ever obtained. The supreme Court in *Nathulal v. Phoolchand* (supra) in an analogous circumstance arising under the provisions of the Madhya Bharat Land Revenue and Tenancy Act, held that any agreement of sale entered in to even without making a condition therein contrary to S. 70 (4) of the said Act, which enacted that prior permission before effecting the registration of the sale deed was necessary, held that the said permission is implied and the agreement entered into is not vitiated. The permission could still be obtained before finally registering the sale deed and the parties could avail the benefit of S. 53- A of the Transfer of property Act. Same is the view expressed by the Supreme Court in *Mrs. Chandnee Widyavati v. Dr. C. L. Katial* (supra). But, however, in the cases before us the fact remains that s. 47 stands deleted and validation period under S. 50- B stands expired. What then the effect would be? on good many occasions it fell for the determination of this court, as to what is the position subsequent to the deletion of S. 47 of the Tenancy Act vis-a-vis the transaction of alienations made under agreements of sale prior to 18-3- 1969 on which date S. 47 stood deleted. A Division Bench of this court in *Syed Jalal v. Targopal* (supra), held that the provisions of the Tenacy Act do not specifically or otherwise make contracts of sale invalid. Again in *Lachamma v. china Venkata Reddy* (supra) wherein the Division Bench of this Court held that since S. 47 stands deleted. The right of defence would be made available to the defendant even in a pending case. A plea of part- performance in defence can be raised when that plea becomes available. This view is further reinforced by the Full Bench of his court in *K. Parvathamma v. Excise commr.* (Supra) wherein their Lordships expressed in unequivocal terms that since S. 47 stood deleted no permission was required before finalisation of the sale, even though the agreement of sale was entered in to at a time when S. 47 was alive.

24. It is, therefore, manifest from the above and we have no hesitation in holding, particularly so in view of the ratio of the Full Bench decision, that subsequent to the deletion of S. 47, it is needless to establish, for the purpose of availing S. 53- A of the Transfer of property Act, that the contracts of sale entered into during the period when S. 47 was in vogue were with permission. Since it stood deleted, it is no more imperative to show that any such permission was obtained, nor the absence would invalidate either the transaction or the possession of the land in the hands of the alienee of transferee.

25. In so far as the judgement in *M. Pocham v. Agent to the state Govt., Adilabad* (supra), to which reference has been made by both the counsel, we have no hesitation in holding that the conclusions and the observations must necessarily be circumscribed and confined to the points arising in that case. In

fact, the question that was framed was thus:

"Therefore, the crucial question that falls for decision in the writ petitions is whether the petitioners who had obtained contracts of sale accompanied by delivery of possession without obtaining the sanction under S. 47 of the Hyderabad Tenancy Act and without later securing a validation certificate under S. 50- B can claim the protection of S. 53- A of the Transfer of property Act after the Regulation came to be applied to the areas in which the lands, which they purported to have purchased, are situate."

Doubtless the matter pertains to the Andhra Pradesh scheduled Areas Land Transfer Regulation and in Particular S. 3 of the said Regulation and also, no doubt, the interaction of Ss. 47 and 50 - B of the Tenancy Act, with S. 3 of the Regulation. A reference to para 19 of the said judgement clearly confirms our conclusions.

"However, we do not express any view on this point since it is not necessary to do so in these cases. The admitted fact remains either by the petitioners or their alienors for securing the required permission under S. 47 even after 1- 12- 1963 and before S. 47 was deleted."

26. It is quite conspicuous from the aforesaid observations that the consideration is clearly confined to S. 3 of the Regulation, which is singular in its content and therefore any observations made vis-a-vis the said regulation can not be imported to explain the position with reference to the general provisions of the Tenancy Act. Even while referring to the Full Bench decision in K. Parvathamma v. Excise Commr. (supra) in para 36 of the judgement, it observed "The Full Bench held that even for revenue sales sanction under S. 47 before the amendment of 1969 was required before the confirmation of such sales. We see nothing in this decision which is different from what we had held. It is noteworthy that in the above decision, the further question of the validity of the transfer and possession as per the Regulation did not arise." we are in agreement with the aforesaid observation. It did not really fall before the Full Bench whether the transfer and possession as per the Regulation was valid. But it certainly fell before the Full Bench, to which reference has been made above, wherein they unequivocally held, while pointedly dealing with the question which is similar to the one before us as under: -

"But it has to be noted that in view of the recent legislation viz., Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act (Third Amendment) (Act 12 of 1969) which came into force on 18- - 1969, S. 47 and the other connected provisions of the main Act have been omitted with the result that no sanction is at all necessary before confirming the sale in favour of the 5th respondent."

27. We emphasise this ratio of the Full Bench time and again for the simple reason that this was laid down at a time when S. 50- B of the Tenancy Act was very much in vogue and the effect of the same, as stated, continued right up to 31- 3- 1972. Notwithstanding the same the Full Bench categorically conclude as

above. Therefore we firmly hold that subsequent to deletion of S. 47 of the Tenancy Act, no sanction is at all necessary for the finalisation even with regard to agreements of sale entered into prior to the deletion of S. 47, by way of registration of sale deeds or otherwise. A fortiori, the possession of the lands given in pursuance of agreements of sale is quite valid and lawful and, therefore, the parties concerned are entitled to avail the provisions of S. 53- A of the Transfer of property Act.

28. In S. A. 450/ 70 dated 21-9-1972 Madhava Reddy, J. While relaying in the said Full Bench decision, has taken similar view. This receives further support from the decision of a Division Bench of this court in A. S. No, 438/ 1969 and A. S. No. 61/ 70, to which one of us (Kondaiah, J. as he then was) was a party. While dealing with the ambit and scope of S. 53- A of the Transfer of property Act, the Bench held "The use of the expression "willing to perform his part of the contract" would make it abundantly clear that the transferee would be entitled to the protection of S. 53- A if he expresses his desire and willingness to perform his part of the contract at the relevant time. The right provided under S. 53-A of the Transfer of property Act to the transferee, being statutory, does not get obliterated by the mere omission or failure on his part to do a particular thing, provided the conditions specified in the section are complied with."

29. We may therefore observe that the decision laid down in N. Podham v. Agent to the state Govt., Adilabad (supra) is confined to the points and ratio laid down therein is not applicable to the case arising under the Ceiling Act. The learned Government Pleader's contention that the observation made in the aforesaid Division Bench decision could also be extended to the cases before us is untenable, firstly because it (was) confined to a situation arising out of S. 3 of the Andhra Pradesh Scheduled Areas Land Transfer Regulation and the consequential impact of Ss. 47 and 50-B on S.3 of the Regulation alone and therefore the Division Bench decision has no application to the case before us and secondly, even if it is to be assumed without admitting that the observations could also be extended to and made applicable to the case on hand, we hold that the said observations are only obiter dicta.

30. The second point is, whether the petitioners, having given the possession of the alienees who continue to be in possession and enjoyment ever since, under agreements of sale entered into long before the advent of the Ceiling Act, could still be held to be "holders" of or "holding" the land within the meaning of S. 3 (I) of the Ceiling Act? Section 3 (I) defines ;holding" as under:-

"3 (I) "holding" means the entire land held by a person-

(I) As an owner; (ii) as a limited owner, (iii) as a tenant; (iv) who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale or otherwise;

or in one or more of such capacities and the expression "to hold land" shall be construed accordingly;

Explanation: where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in the holding of both such persons."

31. If the bar of permission as was required when Section 47 of the Act was in force, is lifted, and in such an event no further permission or sanction, is required any more for alienation, then, by virtue of sec. (i) (v), the alienee or transferee is in possession of the land; and "through part performance of a contract for the sale of the land" and therefore the land must necessarily be included in the holding of the transferee per alienee. In fact, the word "otherwise" which has been employed in section 3 (i) (v) must be given a comprehensive meaning; and if person is in possession either by virtue of a mortgage by conditional sale or through part performance of contract for the sale of land or "otherwise" that land must be included in the holding of that person. No restrictive meaning could be given to the enactments of this nature which are expropriatory in character. We have, therefore, no hesitation in holding that the expression "holding" and the expression; held by a person" occurring in section 3 (i), must necessarily mean to be in actual possession. To be held otherwise, would be doing violence to the language and also intent. "Land held by a person as an owner", means and must necessarily mean, that one has to have not only title but also actual possession. A fortiori, if the owner of the land has put the transferee in possession of the land in part performance of the contract for sale, such land can be included only in the holding of the transferee and cannot simultaneously be computed in the holding of the transferor as well, for that land is not "held" by him as an "owner". This view of ours gains support from a recent division Bench decision in *Authorised officer v. K. S. Narsayya* (1978) 1 APLJ 98).

32. In our judgement, therefore, viewed from any angle, it is quite manifest and unhesitatingly we hold that the alienee or transferee, who has been in possession under an agreement of sale entered into at a time when section 47 was in force will be entitled to sue for specific performance and is not deprived of his right u/s 53- A to protect his possession, on payment of balance of consideration, without the necessity of obtaining any permission since section 47 stood deleted, either on and from 24-1-1971 or even any time posterior to the deletion of section 47, retention of section 50- B notwithstanding. The contentions of the learned Government pleader that the alienation or transfer of the land and consequential possession thereof in favour of alienee or transfer under agreement of sale entered into during the subsistence of section 47 and valid either because of want of permission u/s 47 or because of subsequent validation u/s 50- B and therefore, the alienee or transferee is not entitled to invoke section 53- A of the Transfer of property Act and to sue for specific performance and consequently such land must be included in the holding of both the transferor and transferee, has no substance, and therefore, must fail. The reference is accordingly answered. Advocate's fee Rs. 150/- in each.

33. Answered accordingly.