
(2001) 09 AP CK 0002
In the Andhra Pradesh High Court
Case No : CRP No. 1825 of 2000

G. Venu Gopal Reddy

APPELLANT

Vs

P. Anantha Reddy and Others

RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 32, 38, 38(3), 38(4), 38(5)
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10A, Order 47 Rule 1

Citation : (2001) 6 ALD 565

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M. Damodar Reddy, for the Appellant; A. Pulla Reddy, for the Respondent

Final Decision : Allowed

Judgement

1. The civil revision petition is filed by the revision petitioner u/s 91 of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 aggrieved by the order dated 13-3-2000 passed in Appeal No. F1/IA-14/99 by the Joint Collector, Mahaboobnagar dismissing an application filed by the petitioner seeking review of the order dated 21-6-1997 passed by the Joint Collector, Mahaboobnagar in File No. B7/IA-103/76, B7/17/90 and further to declare that the land in S. No. 45 of Nandigam village to an extent of Acs.5.00 is not covered by any protected tenancy as held by the civil Court.

2. The facts in brief are as follows :

3. The revision petitioner, a third party to the prior proceedings, had purchased the land in Sy. No. 45 of Nandigam village measuring Acs.5.00 from the original pattedar by a registered document bearing No. 1540/90 dated 2-11-1990 and thus he claims to be the absolute owner of the said property by virtue of the said sale deed. The original owners filed suit OS No. 8 of 1973 on the file of District Munsif, Kondangal for recovery of possession of the said land and respondents 1

to 5 herein had contended that they are protected tenants of the land in Sy. No. 45 and hence the civil Court has no jurisdiction to decide such a dispute. The Court of first instance had decreed the suit by holding that the land in Sy. No. 45 is not covered by any protected tenancy and hence the original owner Subhadra Bai and others are entitled to a decree as prayed for and the aforesaid respondents aggrieved by the same had filed AS. No. 6 of 1975 on the file of District Judge, Mahaboobnagar, and the said appeal was dismissed by the judgment dated 6-8-1979 by holding that the protected tenancy certificate is a forged one and the land in Sy. No. 45 is not covered by the protected tenancy and hence the jurisdiction of the civil Court is not ousted and as against the said judgment, the respondents referred to supra also had preferred second appeal SA No. 701 of 1979 on the file of this Hon"ble Court which was also dismissed and subsequent thereto after perusing all the revenue records and also the judgment of the civil Court the petitioner had purchased the land to an extent of Acs.5.00 in the aforesaid survey number by a registered sale deed dated 2-11-1990 and had got mutation of his name also in revenue records as pattedar and possessor and the respondents stated supra, having been unsuccessful in all the proceedings before the hierarchy of civil Courts, again had initiated the proceedings for grant of 38-E Certificate under the provisions of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, hereinafter in short referred to as "Act". Their claim is that they have rights of protected tenancy in the said land and initially the Additional Revenue Divisional Officer, Narayanpet refused to grant 38-E Certificate and however inasmuch as the original owners had sold away the property to the petitioner they did not represent the case before the Joint Collector, Mahaboobnagar though the revision petitioner had purchased this property even in the year 1990 and has been in actual possession and enjoyment of the property to the knowledge of one and all, the Joint Collector, Mahaboobnagar without issuing any notice to the petitioner and without perusing the judgments made by the hierarchy of the competent civil Courts had allowed the claim of the respondents specified supra by granting 38-E Certificate and consequently they had initiated proceedings seeking eviction of the petitioner and after coming to know about the said order dated 1-6-1997 passed by the Joint Collector, Mahaboobnagar, immediately the petitioner filed an application to review the order dated 1-6-1997 mainly on the ground that the petitioner was not served with any notice and further the findings in the said order are contrary to the findings of the civil Court and the Joint Collector, Mahaboobnagar by an order dated 13-3-2000 had dismissed the said application on two grounds - one is on the ground of locus standi and another is on the point of limitation, and the revision petitioner aggrieved by the same had preferred the present civil revision petition.

4. Sri Damodar Reddy, the learned Counsel representing the revision petitioner had narrated the whole history of the matter and had emphatically contended that the revision petitioner being the purchaser of the property is definitely an aggrieved person and hence he has locus standi to file the review application and

the dismissal of the review application on the question of locus standi is bad in law. The learned Counsel had drawn my attention to paragraphs 6 and 7 of the impugned order and had contended that the Court below had gone wrong on the aspect of locus standi. The learned Counsel also had submitted that the authorities under the Act have the power of review and had placed reliance on *Musali Pochaiah and Ors. v. Mothuku Lakshminarasaiah and Ors.* 1984 (2) ALT222, in this regard. The learned Counsel also had placed reliance on *Shivdeo Singh and Others Vs. State of Punjab and Others*, , *Commissioner of Police, A.P. Hyd. v. Sadruddin H. Javeri and Ors.* 1999 (1) ICC 514 and *Sundararaja Perumal Devasthanam, Paramakudi v. T.P. Rajaram* 2000 AIHC 189. The learned Counsel had strongly contended that a purchaser of the property, definitely the petitioner falls within the expression "aggrieved party" and hence the revision petitioner has locus standi to move the review application. The learned Counsel also had drawn my attention to a land ceiling declaration filed by the family members of the vendors of the revision petitioner. The learned Counsel had submitted that the date of knowledge of these proceedings, as far as the revision petitioner is concerned, is 20-10-1999 and had obtained a certified copy on 2-10-1999 and the review application was filed immediately on 25-10-1999 and hence it is perfectly within limitation. The learned Counsel also had submitted that at any rate it cannot be said that the civil Court has no jurisdiction in matters of this nature and had placed reliance on *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, .

5. Sri Pulla Reddy, the learned Counsel representing the contesting respondents in his slow and gentle style had made the following submissions. The learned Counsel had explained the object and ambit of Act 21 of 1950 and had commented that the commencement of the Act itself specifies. "Whereas it is expedient to amend the law relating the relation of landholders and tenants of agricultural land and the alienation of such land....". The learned Counsel had narrated the complete history of the litigation and had contended that the revision petitioner is none other than the son of the Patwari who have been behind this long drawn litigation, which is being fought from sufficiently a long time. The learned Counsel also, after narrating the events had submitted that when the appeal filed before the Joint Collector, Mahaboobnagar was allowed on 6-7-1988 wherein the relief to issue ownership certificate u/s 38-E of the Act was granted, the 6th and 7th respondents who are conscious of the pendency of the writ petition and who are also conscious of the conferment of Section 38-E of the Act had alienated the property in contravention of Section 38-D of the Act and hence in the light of the same it cannot be said that such a person falls within the meaning of aggrieved party and hence the Court below is justified in holding that the review application is not maintainable on that ground. As far as the issue relating to the protected tenancy is concerned, by virtue of Section 99 of the Act, the jurisdiction of the civil Court to decide that question is barred and hence the judgments of the hierarchy of the civil Courts are of no consequence at all. The learned Counsel had placed reliance on *Mohd. Burhan v. Saivling Rao* and

Ors. 1987 (2) ALT 46 (NRC) and also Islamia Arabic College Vs. Balaram Singh (Dead) L.Rs. and Others, . The learned Counsel had contended about the retrospective effect of such Certificate granted under the Act. It was also contended that the death of Subhadra Bai was not intimated and the provisions of Order 22, Rule 10-A CPC also had not been complied with. At any rate, the impugned order is not challenged by those parties and the possession of a party when a Certificate is granted u/s 38-E of the Act is not at all relevant. The finding relating to protected tenancy between the land holder and the protected tenants became final and hence the revision petitioner, the son of a Patwari who had been behind this litigation from a very long time, cannot be said to be a person bona fide coming to the Court as an aggrieved party so as to invoke the jurisdiction of the Court under Order 47, Rule 1 CPC. The learned Counsel had finally touched several aspects relating to the merits and demerits of the contentions of the parties and had also contended that the declaration under the land ceiling is of no consequence and at any rate since in the impugned order clear reasons had been recorded why the review petition is being dismissed, such well-considered order cannot be interfered with while exercising the revisional power u/s 91 of the Act. The learned Counsel had placed strong reliance on paragraphs 18 and 19 in Kotaiah v. Property Association of the Baptist Churches (Pvt.) Ltd.

6. Heard both the Counsel. Section 91 of the Act dealing with revisions reads as follows:-

Revisions:--Notwithstanding anything contained in this Act or any other law for the time being in force, an application for revision shall lie to the High Court from any final order passed on appeal by the Collector or Board of Revenue on the following grounds :

- (a) that the original or appellate authority exercised a jurisdiction not vested in it by law; or
- (b) that the original or appellate authority failed to exercise a jurisdiction so vested; or
- (c) in following the procedure or passing the order, the original or appellate authority acted illegally or with material irregularity.

In the impugned order, at paragraphs 6 and 7 the Court below had discussed on the aspect of locus standi and also on the aspect of limitation and had felt that the review petition is liable to be dismissed at the stage of admission and the interim order granted by the Court by an order dated 9-11-1999 is liable to be vacated. It is no doubt true that the revision petitioner, as a third party, had filed the review application after a delay of 2 years four months, but in the light of the dates the date of knowledge being 20-10-1999 and the petitioner obtaining certified copy on 22-10-1999 and the revision being filed at the earliest point of time on 25-10-1999, the third party purchaser-revision petitioner had made out a case for entertaining the review. Hence dismissing the review application at the

stage of admission itself on that ground cannot be sustained. Apart from this aspect of the matter, the most crucial aspect is whether the petitioner has locus standi to maintain the review application at all. It is not in dispute that the petitioner had purchased this property by virtue of a registered sale deed. Whether such a sale is in accordance with the provisions of the Act or not or what is the validity of such sale is a different question altogether. But the fact remains that the person who had purchased the property cannot be said to be a person having no locus standi to maintain a review application. Hence the revision petitioner, as an aggrieved party, can definitely maintain the review application. Reliance also can be placed for this purpose on the decisions (2), (3) and (4) referred supra. Hence, I am of the opinion that the revision petitioner falls within the meaning of "aggrieved party" to maintain the review application. It may be that Kista Reddy always had been behind this litigation and the present revision petitioner is the son of the said Kista Reddy, but at the best, it may be a fact to be taken into consideration while deciding the bona fides of the parties and at any rate this fact does not go to the very root of the matter.

7. Section 99 of the Act dealing with bar of jurisdiction reads as follows:

Bar of Jurisdiction:--(1) Save as provided in this Act no civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tahsildar, Tribunal or Collector or by the Board of Revenue or Government.

(2) No order of the Tahsildar, Tribunal or Collector or of the Board of Revenue or Government made under this Act, shall be questioned in any civil Court or criminal Court.

It is no doubt true that it is specified in Section 99 of the Act that no civil Court shall have jurisdiction to settle, decide or deal with any question by the Tahsildar, Tribunal or Collector or by the Board of Revenue or Government. In the light of the said provisions, the Counsel for the contesting respondents had contended placing reliance on the decisions (6) and (7) referred supra that the jurisdiction of the civil Court is barred in adjudication of dispute of this nature. However, it is pertinent to note that the revision petitioner is specifically contending that in the hierarchy of civil Courts in their judgments, specific finding had been recorded that this land is not covered by the protected tenancy at all and had decreed the suit in favour of the original owners Subhadra Bai and others. Hence, in the light of the said submission, it is always essential, even for the Joint Collector, to examine the judgments of the civil Courts and also the High Court in the Second Appeal and to see what issues had been settled and what findings had been recorded by those Courts while arriving at the conclusion whether the civil Court is having jurisdiction at all or not to decide this dispute or whether the contention of the revision petitioner that this land falls outside the purview of the protected tenancy has to be accepted or not. Unless the judgments rendered by the hierarchy of civil Courts also are looked into, and if necessary the relevant records relating to the protected tenancy also are verified by giving opportunity

to the revision petitioner, it may not be possible for even the Court below to arrive at a just and proper conclusion in this regard. It is also pertinent to note that evidently in view of the sale in favour of the petitioner, the vendors had lost interest and they had neither appeared nor contested the matter and consequently the order had been passed. The Apex Court in the decision (8) referred supra held:-

(i) The protected tenant has a right to become full owner of the lands in his possession. He becomes the owner when the Government issues a notification u/s 38(E). We are told that the Government had issued such a notification on October 1, 1973, relating to the District where the lands in question are situated. It was about three years earlier to termination of the appellants' tenancy by the Association. If the appellants had a right to become owners of the tenanted lands, the question of terminating their tenancy would not arise.

(ii) The protected tenant cannot be dispossessed illegally by the landlord or anybody else. If so dispossessed, the Tahsildar either suo motu or on application must hold a summary inquiry, and direct that the land be restored to the protected tenant. That is the mandate of Section 38(E) and the Explanation thereof.

(iii) The landlord by himself cannot dispossess the protected tenant even if the tenancy is terminated in accordance with law. The landholder will have to take recourse to Section 32. He must approach the Tahsildar to hold an enquiry and pass such order as he deems fit.

(iv) Section 38(D) prohibits the landholder from alienating the tenanted land to third parties. If the landholder intends to sell the land, he must give notice in writing of his intention to the protected tenant. The first offer must be given to the protected tenant. It is only when the protected tenant does not exercise the right to purchase, the landholder could sell the land to third parties. The alienation made in contravention of these provisions has no legal effect".

It is no doubt true that by the date of sale in favour of the revision petitioner the Certificate was issued u/s 38-E of the Act in favour of respondents 1 to 5. But however ultimately, the writ petition was allowed on 23-1-1995 and after remand again the said respondents became successful. This also is a matter to be adjudicated only after issuing notice to the aggrieved party i.e., the revision petitioner. It may be relevant to note Section 38-D also in this context, which deals with procedure when land holder intends to sell to a protected tenant and the provision reads as follows:

Procedure when landholder intends to sell to a protected tenant :--(1) If the landholder at any time intends to sell the land held by the protected tenant, 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 notice. If there is any dispute about the reasonable price payable

by the protected tenant for the land, the provisions of Sub-sections (3) to (8) of Section 38 shall apply mutatis mutandis.

(2) If the protected tenant does not exercise the right of purchase in response to the notice given to him by the landholder under Sub-section (1) such protected tenant shall forfeit his right of purchase of the same and the landholder shall be entitled to sell such land to any other person. On such a purchase by an other person, the protected tenant shall forfeit all his rights in the land save those provided for in Section 41.

Section 38 of the Act deals with right of protected tenant to purchase land and Section 41 of the Act deals with compensation for improvements made by the protected tenant. It is no doubt true that Section 38-D of the Act specifies that if the landholder at any time intends to sell the land held by the protected tenant, he shall give a notice in writing of his intention to such protected tenant and offer to sell the land to him. Here, the main contention of the revision petitioner-purchaser is that this land is not covered by the protected tenancy at all and the self-same issue had been raised in the competent civil Court as between his purchasers in title, the vendors and respondents 1 to 5 and this being a judgment inter parties, the findings given on the said aspect is binding on the parties. This is the crucial issue which may have to be decided in the present matter after examining the judgments rendered in the civil proceedings. Hence, unless all these factual aspects are decided it cannot be said that the Court below had made an order in accordance with the procedure while making the order. In *Kadari Nageswara Rao Vs. The Joint Collector and Others*, , while dealing with the cancellation of patta by the Joint Collector without considering the judgment of a civil Court and other relevant documents evidencing possession of patta holder, it was held that the approach of the Joint Collector in not considering such documents is erroneous. Evidently, in the present case, the orders were made without notice to the revision petitioner and the revision petitioner, when his possession was sought to be disturbed, had invoked the jurisdiction of the Court below requesting the Court to exercise the power of review which was not inclined to exercise that jurisdiction and hence I have no hesitation to hold that the Joint Collector, Mahaboobnagar had acted illegally or at least with material irregularity, warranting interference with the impugned order.

8. For the foregoing reasons, the impugned order dated 13-3-2000 is hereby set aside and the matter is remitted back to the Joint Collector, Mahaboobnagar to dispose of the matter in accordance with law as per the observations referred to supra. It is made clear that the parties are at liberty to raise all the contentions by placing all the material available on record and if necessary, the Court below also may permit the parties to let in necessary oral evidence, if they choose do so in this regard in the interest of justice. The civil revision petition is allowed to the extent indicated above. However, in the facts and circumstances of the case the parties do bear their own costs.