
(2005) 10 AP CK 0030

In the Andhra Pradesh High Court

Case No : CRP No's. 1200 and 6708 of 2003

Gadda Balaiah

APPELLANT

Vs

Joint Collector, Ranga Reddy District and Others

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 15, 19, 19(3), 29, 29(2)

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 13, 13A

Land Reforms Ceiling on Agricultural Act, 1972 — Section 13, 19

Citation : (2005) 6 ALD 417 : (2005) 6 ALT 572

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : M. Chandra Sekhar Rao, in CRP No. 6708 of 2003 and Government Pleader for Land Ceiling in CRP No. 1200 of 2003, for the Appellant; Government Pleader for Revenue for Respondent Nos. 1 to 7 in CRP No. 6708 of 2003, B. Adinarayana Rao, for Respondent Nos. 8 to 10 and 12 to 17 in CRP No. 6708 of 2003, K. Srinivas, for Respondent No. 11 in CRP No. 6708 of 2003, P. Venugopal, for Respondent No. 18 in CRP No. 6708 of 2003 and for Respondent No. 2 in CRP No. 1200 of 2003, N. Sridhar Reddy, for Respondent No. 19 in CRP No. 6708 of 2003 and for Respondent No. 1 in CRP No. 1200 of 2003, for the Respondent

Judgement

D.S.R. Varma, J.—Heard both sides.

2. Since both the civil revision petitions are inter-related and the subject-matter being the same, they are being disposed of by this common order.

3. C.R.P. No. 6708 of 2003 is directed against the order passed by the Joint Collector, Ranga Reddy District (for brevity "the Joint Collector"), in Case No. F2/4902/2001, dated 9-12-2003, wherein and whereby the order passed by the Revenue Divisional Officer, Chevella Division, Ranga Reddy District (for brevity "the R.D.O.") granting sale certificates u/s 38(6) of the A.P. (T.A) Tenancy and Agricultural Lands Act, 1950 (for brevity "the Tenancy Act") in respect of lands

admeasuring 37.16 guntas was set aside.

4. The R.D.O., granted sale certificates in favour of the petitioners for an extent of Ac.37.16 guntas, situate in S.Nos. 51, 52 and 53 part of Gachibowli Village, Ranga Reddy District, in Case No. G/3640/1996, dated 28-4-2001. The Respondent No. 18 is a Society and Respondent Nos. 8 to 17 are its members who filed an appeal before the Joint Collector having felt aggrieved by the order passed by the R.D.O.

5. The Joint Collector after hearing both sides and on considering the facts and circumstances set aside the order passed by the R.D.O., through the impugned proceedings, dated 9-12-2003. Hence, the present Civil Revision Petition has been filed.

6. For better appreciation, the facts shorn of and are not in dispute are as under:

A total extent of Ac. 157.03 guntas in S.Nos. 37, 40, 42 to 47 and 51 to 53 part of Gachibowli Village, Ranga Reddy District, originally belongs to one Sri Elias Burni. He purchased the said lands from one Smt. Lingamma on 30/02/Fasli. Later on he died leaving behind three daughters. The predecessors of the petitioners were actually the tenants of said Smt. Lingamma at the time of purchase of the land by the said Sri Burni and continued in the same capacity. Later on, one Kastopa Corporation purchased the said land from the daughters of said Sri Burnt through a registered sale deed and also got its name mutated in the Revenue Records. After the advent of Agricultural Land Ceiling Laws in the State, as are being under the law, the said Kastopa Corporation filed a declaration before the Land Revenue Tribunal (for brevity "the Tribunal").

7. The Tribunal after consideration of the holding of declaration held that Mr. R.R. Kamdar was declared to be a surplus holder for an extent of Ac. 114.27 guntas out of the total extent of Ac. 190.17 guntas without following the procedure of conducting an enquiry contemplated u/s 13 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for brevity "the Land Reforms Act"), as to whether the said lands were covered by the protected tenants or not.

8. It is further not in dispute that an extent of Ac.31.43 guntas of land in S.Nos. 46 and 47 was allotted to one Sri G.S. Raju, Maharshi Institute of Creative Intelligence, Masabtank, Hyderabad, under G.O. Ms. No. 594, Revenue (Q) Department, dated 20-4-1979 (for short "G.O. Ms. No. 594"), for a long lease of 30 years. Having come to know the said fact, the petitioners in C.R.P. No. 6708 of 2003, who are protected tenants, filed W.P. No. 4590 of 1980 before this Court challenging the said G.O. Ms. No. 594.

9. A learned single Judge of this Court formulated two questions for determination by the competent authority, which are as under:

(1) Whether the petitioners were declared as protected tenants of the lands concerned herein including S.Nos. 46 and 47, and if so, under what provision and when? and

(2) Did the petitioners or any of them or their predecessors-in-interest surrender their tenancy rights according to law and, if so, which of them, when and in which proceedings?

10. It was further observed by the learned single Judge of this Court that the impugned G.O. Ms. No. 594 shall not be given effect to pending passing of order pursuant to the abovementioned directions and that implementation of said G.O. Ms. No. 594 would depend upon the order to be passed by the District Collector or any other officer designated by him. In consequence thereto, the R.D.O., had conducted detailed enquiry in file No. G/1565/ 81, dated 27-7-1981, and eventually recorded a finding that the subject lands are covered by the protected tenancy rights u/s 37-A of the Tenancy Act and four persons out of the original protected tenants who are alive as on the date of enquiry never surrendered their rights.

11. It is also not in dispute that the present petitioners in C.R.P. No. 6708 of 2003 are no other than the legal representatives of original protected tenants, who are no more. Despite which it appears that the petitioners were not granted benefits under Sections 38-E(1) and 38-A and B under the Tenancy Act. Hence, the petitioners have approached this Court by way of writ petition W.P. No. 4059 of 1982. The said writ petition was disposed of by another learned single Judge of this Court through order, dated 15-7-1987, holding in effect that the rights of the petitioners as protected tenants u/s 37-A were established and that the alleged surrender of the tenancy rights was not proved. Further, liberty was given to the petitioners to the effect that they are entitled to purchase the said lands u/s 38 of the Tenancy Act and in view of the fact that applications were already filed, the official respondents were directed to dispose of the same within a prescribed period. The said judgment was challenged in Writ Appeal No. 1420 of 1987 and the same was dismissed by a Division Bench through order, dated 25-1-1993, confirming the order passed by the learned single Judge in W.P. No. 4059 of 1982, dated 15-7-1987, and that the same has become final.

12. In fact, there is no dispute with regard to ownership in respect of Ac.73.03 guntas of land held by the protected tenants. The present dispute is in connection with issuance of sale certificates for an extent of Ac.37.16 guntas in S.Nos. 51 to 53 of Gachibowli Village, issued by the R.D.O., in Case No. G/3640/1996, dated 28-4-2000. The said order was challenged by the Respondent No. 18 herein by way of filing an appeal before the Joint Collector, whereby the order of the R.D.O., was set aside and consequently the sale certificates issued in favour of the petitioners u/s 38-A of the Tenancy Act. Hence, C.R.P. No. 6708 of 2003 is filed by the legal representatives of the protected tenants.

13. Pursuant to the proceedings under the Land Ceiling Act, dated 9-12-1975, basing on the sale certificates issued by the R.D.O., the Tribunal, under the Land Ceiling Act, reopened the matter and recomputed the excess land and declared surplus land in S.Nos. 51, 52 and 53, situate at Gachibowli Village, for a total

extent of Ac.37.16 guntas. Aggrieved thereby, the State of A.P., represented by its Authorised Officer, Land Reforms, Ranga Reddy District, filed C.R.P. No. 1200 of 2003.

14. From the contentions of the respondent Nos. 8 to 17 (purchasers) in C.R.P. No. 6708 of 2003, it appears that the grounds raised and the area of controversy is the same. They are represented by the learned Counsel Sri P. Venugopal and Sri C. Hanumantha Rao.

15. The contentions of the learned Counsel appearing for the petitioners broadly are that the sale deeds in favour of the purchasers are not valid since the procedure contemplated under the Land Reforms Ceiling on Agricultural Act, 1972 (for brevity "the Land Ceiling Act") or Section 19 of the Tenancy Act was not followed; that certain rights were conferred upon the tenants under the Tenancy Act under Sections 37 and 38 as per which the tenants are entitled to have provisional right of purchase from the landholder. If there is no agreement to that effect between the landholder and the tenant or if the tenants surrender the land to the landholder then only the landholder would be entitled to sell away the land in favour of third parties in exclusion of the protected tenants and their consequential rights under the Tenancy Act. It is his further contention that the alleged surrender of the rights by the tenants in favour of the landholder is absolutely incorrect and even if there was any, the same is to be held as invalid inasmuch as the procedure prescribed for surrender u/s 19 of the Tenancy Act was not followed.

16. Per contra, it is the contention of the learned Counsel appearing for the purchasers that in view of the registered sale deeds executed by the tenants, it should be construed as the tenants surrendered their rights u/s 38-A of the Tenancy Act and consequently amounts to termination of the tenancy rights. Hence, the effect of the contention of the purchasers is that the petitioners cannot approbate and reprobate after declaring in the sale deed that they have expressed their unwillingness to purchase the schedule mentioned property u/s 38-D of the Tenancy Act and consequently the rights under the said provision would stand extinguished. The said sale deeds, which are part of the record, were undisputedly executed ranging from the month of July 1987 till August 1990.

17. Further, it is the contention of learned Counsel appearing for the purchasers that the tenants with ulterior motive started litigation by way of seeking sale certificates in their favour u/s 38-A of the Tenancy Act.

18. It is also the contention of learned Counsel for the purchasers that the lands purchased by the purchasers are only the retainable extent of the lands by the landholders, after conclusion of the proceedings under the Land Ceiling Act. Even if any order is passed by the High Court, the same is not binding on the purchasers since no notice was issued to them.

19. In this regard, it is necessary to examine certain important provisions of the

Tenancy Act, for better appreciation of the matter, to the extent relevant.

20. "Section-19. Termination of tenancy:--

(1) Notwithstanding any agreement or usage or any decree or order of a Court of law, but subject to the provisions of Sub-section (3) no tenancy of land shall be terminated before the expiration of the period for which the land is leased or deemed to be leased otherwise than--

(a) by the tenant by surrender of his rights to the landholder atleast a month before the commencement of the year:

Provided that such surrender is made by the tenant in writing and is admitted by him before and is made in good faith to the satisfaction of the Tahsildar; or

Provided further that where the land is cultivated jointly by joint tenants or members of an undivided Hindu family, unless the surrender is made by all of them, it shall be ineffective in respect of such joint tenants as have not joined in the application for surrender, irrespective of the fact that the names of all the joint tenants are not mentioned in the certificate;"

21. Section 37-A of the Tenancy Act is a deeming provision as regards the protected tenants. According to which a person who at the time of commencement of the A.P. (T.A) Tenancy and Agricultural Lands (Amendment) Act, 1955 (for brevity "the Tenancy (Amendment) Act"), holds any land as a tenant is deemed to be a protected tenant subject to the area owned by the landholder and the rights as protected tenant of a person shall be recorded in the relevant revenue records or village records.

22. For ready reference, Section 37-A of the Tenancy Act is extracted hereunder:

"37-A. Persons holding lands as tenants at the commencement of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Amendment) Act, 1955 to be deemed to be protected tenants:--

(1) Notwithstanding anything contained in this Act, every person who at the commencement of the A.P. (T.A.) Tenancy and Agricultural Lands (Amendment) Act, 1955 holds as tenant any land in respect of which he is not deemed to be a protected tenant under this Act, shall be deemed to be a protected tenant if the total area of the land owned by the landholder including the land under the cultivation of his tenants is more than three times the area of a family holding for the local area concerned:

Provided that nothing in this section shall affect the rights of any other person who already holds a protected tenancy certificate in respect of such land or whose rights as protected tenant are under investigation before a competent authority, if such other person applies to the Tribunal for safeguarding his rights within a period of six months from the commencement of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Amendment) Act, 1955.

(2) The rights as a protected tenant of a person deemed under Sub-section (1) to be a protected tenant shall be recorded in the Record of Rights or, where there is no Record of Rights, in such village record as may be prescribed."

23. It is not in dispute that the petitioners in C.R.P. No. 6708 of 2003 were protected tenants as on the date of commencement of Tenancy (Amendment) Act, 1955.

24. When they are deemed to be protected tenants, as stated above, their rights are carved out u/s 38 of the Tenancy Act.

25. Section 38-D of the Tenancy Act deals with the procedure when the landholder intends to sell away the land to the protected tenant. It postulates that the landholder as and when intends to sell away the land, an offer must be given in writing to the tenant and the intending tenant to purchase the said land shall again intimate in writing to the landholder regarding his readiness to purchase the land.

26. Section 38-E of the Tenancy Act is regarding ownership of land held by the protected tenants to stand transferred to them from a notified date. As per the said provision, the Government may by a notification declare the area from a date as may be specified and the ownership of such lands held by the protected tenants which they are entitled to purchase from the landlords, notify that from such date the protected tenants shall be deemed to be the full owners of such lands.

27. In this regard, it is also necessary to examine Section 13 of the Land Ceiling Act, for better appreciation of the matter, and the same is extracted hereunder:

"Section 13: Special provision for protected tenants:--(1) Where the holding of any owner includes any land held by a protected tenant, the Tribunal shall, in the first instance, determine whether such land or part thereof stands transferred to the protected tenant u/s 38-E of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950, and if so, the extent of land so transferred; and such extent of land shall thereupon be excluded from the holding of such owner and included in the holding of such tenant, as if the tenant was the owner of such land for the purposes of this Act.

(2) Subject to the provisions of Sub-section (1), the relevant provisions of this Act aforesaid shall apply in the matter of such land by such protected tenant."

28. It is not in dispute that when the protected tenants filed a writ petition in W.P. No. 4590 of 1980 challenging G.O. Ms. No. 594, dated 20-4-1979, wherein long lease of 30 years was granted to one Maharshi Institute of Creative Intelligence, a learned single Judge of this Court disposed of the same through order, dated 17-2-1981, with certain directions.

29. In compliance of the directions of learned single Judge of this Court, in the said writ petition, the R.D.O., had conducted a detailed enquiry and recorded a

finding that such lands were covered by protected tenancy rights u/s 37A of the Tenancy Act.

30. Another writ petition in W.P. No. 4059 of 1982 was filed by the petitioners on the ground that they were denied of the benefits of the findings recorded by the R.D.O., under Sections 38E and 38A and B of the Tenancy Act.

31. The eventual conclusion arrived at by this Court in the said writ petition was that the petitioners were entitled to ownership certificates u/s 38E of the Tenancy Act to an extent of Ac.73.03 guntas out of total extent of Ac. 157.03 guntas in S.Nos. 37, 40, 42 to 47 and 51 to 53 with a further direction to the competent authority to enquire and consider the applications filed by the protected tenants u/s 38-A of the Tenancy Act to purchase the lands held by them within a prescribed period. The said judgment was again challenged by way of an appeal in W.A. No. 1420 of 1987 whereby a Division Bench of this Court confirmed the judgment rendered by the learned single Judge of this Court.

32. The Division Bench categorically found that no enquiry was held as contemplated u/s 13 of the Land Ceiling Act and that by the time the proceedings under the Land Ceiling Act were initiated on 9-12-1975, the protected tenants have already become owners by virtue of the statutory declaration and hence there cannot be surrender of lands held by the tenants u/s 38-B of the Tenancy Act.

33. By virtue of the said confirmatory judgment of the Division Bench of this Court, three things would follow:

(a) the declaration that the petitioners were the protected tenants u/s 38E of the Tenancy Act and the finding thereof had become final;

(b) the enquiry conducted by the R.D.O., shall be conducted upon the applications made by the tenants regarding their rights of purchase u/s 38 of the Tenancy Act; and

(c) that there was enquiry conducted u/s 13 of the Land Ceiling Act with regard to the rights of the protected tenants, while determining the excess land.

34. The most significant factor that is born out of the record is that the alleged sale transactions between the petitioners and the respondent Nos. 8 to 17 who are members of the society/purchasers had taken place subsequent to the judgment rendered by a learned single Judge of this Court in W.P. No. 4059 of 1982, dated 15-7-1987, against which the Government preferred an appeal in W.A. No. 1420 of 1987.

35. The learned single Judge of this Court categorically recorded a finding as under:

"... the petitioners are entitled to the issue of ownership certificates u/s 38-E of the Tenancy Act much earlier to the conclusion of the Ceilings case as the protected tenancy is established u/s 37-A and the alleged surrender of tenancy

rights is not proved."

36. Consequent upon the directions of the learned single Judge of this Court, in W.P. No. 4059 of 1980, the R.D.O., as confirmed in W.A. No. 1420 of 1987, by a Division Bench through judgment, dated 25-1-1993, had conducted a detailed enquiry.

37. Now, it is necessary to refer to the findings recorded by R.D.O., in his order, dated 28-4-2001, which are as under:

"On verification of the record placed before me it is found that originally, the petitioners or their ancestors were recorded as protected tenants over an extent of Ac. 157.03 gts., out of Sy.Nos. 37, 40, 42 to 47, 51 to 53 situated at Gachibowli village. On verification of the original unregistered sale deed filed by the petitioners herein it is found that they have purchased the lands from its owner Sri Rasiklal R. Kamdar who is a declarant in C.C.No. W/264/75, in Sy.Nos. 46, 47, 51, 52 & 53, adm. Ac.11-28, 19-29 gts, 17-20 gts., 15-36 gts., and 18-10 gts, respectively, and paid the entire sale consideration to the landlord on 20-3-1970. The veracity and contents of this have been verified and found to be genuine. Though the petitioners have purchased all the lands in Sy.Nos. 46, 47, 51, 52 & 53, situated at Gachibowli vg., from its landlord, during the course of hearing the landlord has opted to retain the lands in Sy.Nos. 46 (Ac.11-28 gts.), 47 (Ac. 16.40 gts.,) and 53-- paiki (Ac.) and expressed no objection for issuance of 38-A Sale Certificates to the petitioners/protected tenants over the lands in Sy. Nos. 51 (Ac. 17-20 gts.), 52 (Ac.15-30 gts.) and 53-- paiki Ac.4.01 gts.). Though the petitioners/protected tenants represented by their G.P.A. Holder who was present during the enquiry and made a statement that the 38-A Sale Certificates may be issued in favour of the petitioners/protected tenants as per their entitlement has not expressed any objection exercised by the landlord regarding retainable lands. Having gone through the records and statements of both the parties, it is very clear that the statement of landlord/declarant stating that he opted to retain the lands covered by Sy.Nos. 46, 47 & 53 and further expressing "no objection" for issuance of 38-A Sales Certificates in favour of petitioners/protected tenants for the land bearing Sy.Nos. 51, 52 and 53-- paiki totally adm. Ac.37.16 gts., the request of the petitioners/protected tenants can be considered against the lands in Sy.Nos. 51, 52 and 53-- paiki since they have not raised any objection for the option exercised by the landlord/declarant. The objection of the Authorised Officer, Land Reforms, R.R. District, that the petitioners/ protected tenants are not entitled for availment of provision in accordance with Section 13-A of A.P.LR (COAH) Act, 1973, is not maintainable as the directions of Hon"ble High Court in W.P. No. 4059/82, dated 15-6-1987, is very specific that the petitioners/protected tenants are having right over an extent of Ac. 157.03 gts., as protected tenants and the appeal filed by the Government in W.A. No. 1420/87 has been dismissed by the Hon"ble High Court vide its order, dated 25-1-1993, and the Government has not preferred any S.L.P., against the same."

(emphasis supplied)

38. The abovementioned order of the R.D.O., had been appealed against by the purchasers. The Joint Collector, after giving a categorical account of various sale transactions, arrived at the conclusions, which are as under:

"In view of the above, it is clearly evident that most of the sale certificate holders u/s 38(6) of A.P. (T.A) Tenancy and Agricultural Lands Act, 1950, as discussed in the earlier paras have executed about (588) Registered Sale deeds in favour of different persons in the suit land and other lands. It is nothing but relinquished their Protected Tenancy Rights u/s 19 of Tenancy Act, as discussed in the earlier paras."

39. With the above conclusions, the order passed by the R.D.O., dated 28-4-2001, was set aside.

40. From a bare perusal of the said order, the reasoning and the findings recorded by the Joint Collector, it appears that the petitioners/tenants have relinquished their rights u/s 38 of the Tenancy Act.

41. At the outset, I am of the considered view that the finding recorded by the Joint Collector is totally erroneous and he was under the premise that the sale transactions, which are being relied on by the purchasers, do amount to relinquishment/ surrender of their rights conferred u/s 38(6) of the Tenancy Act.

42. In this regard, it is to be remembered that the learned single Judge has passed an order in W.P. No. 4059 of 1982, dated 15-7-1987, which was confirmed by a Division Bench of this Court in W.A. No. 1420 of 1987 through judgment, dated 5-1-1993.

43. The alleged registered sale deeds said to have been executed by the petitioners wherein it was stated that the vendors have expressed their unwillingness to purchase the schedule mentioned property u/s 38D of the Tenancy Act and the protected tenancy rights and the protected tenants rights of the vendors shall stand extinguished over the schedule mentioned property, were executed subsequent to the judgment rendered by the learned single Judge of this Court in W.P. No. 4059 of 1982, dated 15-7-1987, and before the judgment rendered by a Division Bench of this Court in W.A. No. 1420 of 1987, dated 5-1-1993 confirming the said judgment of the learned single Judge.

44. Nextly, in the year 1986-1987 wherein during the said period, registered sale deeds were executed, the protected tenants had no right to sell or relinquish since their rights were limited to the extent mentioned u/s 30 of the Tenancy Act.

45. Another important provision under the Tenancy Act is Section 30. For ready reference, Section 30 of the Tenancy Act is extracted hereunder:

"30. Sub-division, subletting and assignment prohibited:--(1) No sub-division or subletting of any land by a tenant and no assignment of any interest held by a tenant shall be valid.

(2) Notwithstanding anything contained in Sub-section (1) it shall be lawful for a tenant to be a member of a Co-operative Farming Society, and as such member to sublet, assign, mortgage or create a charge on his interest in the land in favour of such society."

46. In a way, Sub-section (1) of Section 30 of the Tenancy Act is an absolute bar for assignment of any kind of land including sublet assignment, mortgage or create any charge or his interest in the land. This aspect has already been dealt with by this Court in S. Rangaiah and Others Vs. Collector and Others, .

47. Further, Section 38-D of the Tenancy Act deals with the procedure when a landholder intends to sell away the land to the protected tenant.

48. From a conjoint reading of Sections 30 and 38-D of the Tenancy Act, the following would emerge:

(a) There is a specific bar for alienation of any interest held by the tenant on the land u/s 30 of the Tenancy Act;

(b) When the landholder intends to sell the land to the protected tenants must give the first offer to the tenant and upon such offer it is for the protected tenant either to express his readiness to purchase the land within six months from the date of receipt of the notice or not; and

(c) If the tenant does not exercise his right as contemplated under Sub-section (1) of Section 38D of the Tenancy Act, the tenant shall forfeit his right to purchase.

49. Therefore, the above two provisions deal with certain rights and duties cast upon the tenant and the landlord regarding sale of the properties owned by the landlord.

50. It is to be specifically noted that as on the date of execution of registered sale deeds, the petitioners were only protected tenants u/s 37-A with a duty cast upon them not to alienate the lands u/s 13 of the Tenancy Act.

51. As already noticed, the protected tenant would get right of ownership either by way of notification by the Government or u/s 38-D of the Tenancy Act after obtaining sale certificate from the competent authority, upon offer and acceptance of sale and purchase made by the landlord respectively.

52. In other words, the protected tenant will not get the status of a "vendor" unless and until he gets right either u/s 38-E or 38-D of the Tenancy Act.

53. In the instant case, it could be seen from the registered sale deeds that the petitioners/tenants were termed as "vendors No. 2". The said sale deeds were executed during the years 1986-1987 on which dates no tenant was given the rights u/s 38-D of the Tenancy Act by way of issuance of sale certificate and in such a case it is incomprehensible as to how in the registered sale deeds the protected tenant can be termed as "vendors No. 2" for the purpose of selling

away the property to the purchasers.

54. It however appears to me that the landlord had already determined to sell away the disputed land to the purchasers and in order to surmount the procedure prescribed under Sections 38(4), 38(6) and 38-D of the Tenancy Act, employed the following language in the sale deeds and to the extent relevant the same is extracted, which is thus:

"And WHEREAS vendor No. 1 have offered to sell a piece of Scheduled mentioned land being plot Nos. 142 and 143 measuring 534 Sq.Yds. OR 446 Sq.Mts. In Sy.No. 51 situated at Gachi Bowli Village, Lingampally Mandal, R.R. Dist, which is more fully described in the schedule infra which shall hereafter be referred to as the "Schedule Property" to the Vendors No. 2, u/s 38-D of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, in writing and the Vendors No. 2 have expressed their unwillingness to purchase the schedule property, as such, u/s 38-D, the protected tenancy rights of the Vendors No. 2 shall stand extinguished over the Schedule Property and, therefore, the Vendors No. 1 decided to sell the schedule property to the purchaser herein for a total lump-sum sale consideration of Rs. 11,748/- only (Rupees Eleven Thousand Seven Hundred Forty Eight only). However, the Vendors No. 2 are added as co-vendors to avoid any possible complications from them in future."

(emphasis supplied)

55. To put it in a different way, the said language in the registered sale deeds would only, in fact, show that the landlord had shot two birds in one shot - firstly getting over from the procedure prescribed u/s 38-D of the Tenancy Act and - secondly by terming the tenants as "vendors No. 2" or by elevating their status from protected tenants to vendors/owners i.e., even before their ownership rights are crystalised u/s 38 of the Tenancy Act, and sell away the property to the purchasers under a single document i.e., registered sale deed.

56. This novel procedure adopted by the landlord and the purchasers, in my considered view, is only a subterfuge in order to overcome the mandatory provisions and the procedure prescribed under the Tenancy Act.

57. The main/sole ground for the Joint Collector to reject the order, dated 28-4-2001, passed by the R.D.O., is that the tenants have relinquished their rights u/s 19 of the Tenancy Act, by way of executing the registered sale deeds.

58. In this context, apart from the discussion made above, it is imperative to read Section 19 of the Tenancy Act, to the extent relevant, which is extracted hereunder:

"Section 19. Termination of tenancy:--

(1) Notwithstanding any agreement or usage or any decree or order of a Court of law, but subject to the provisions of Sub-section (3) no tenancy of land shall be terminated before the expiration of the period for which the land is leased or

deemed to be leased otherwise than--

(a) by the tenant by surrender of his rights to the landholder atleast a month before the commencement of the year:

Provided that such surrender is made by the tenant in writing and is admitted by him before and is made in good faith to the satisfaction of the Tahsildar; or Provided further that where the land is cultivated jointly by joint tenants or members of an undivided Hindu family, unless the surrender is made by all of them, it shall be ineffective in respect of such joint tenants as have not joined in the application for surrender, irrespective of the fact that the names of all the joint tenants are not mentioned in the certificate;"

59. The above provision makes it abundantly clear that two basic requirements are to be satisfied in order to call the tenancy as terminated; firstly the tenancy rights shall be surrendered/relinquished to the landholder and secondly such surrender shall be admitted in writing in good faith and the same shall be to the satisfaction of the Tahsildar.

60. I must, in limini, state that both these conditions are not satisfied and as such, I am of the view that the tenancy cannot be treated as surrendered/relinquished merely because the tenants had executed registered sale deeds in the capacity of "vendors" along with the landholder to third parties/purchasers.

61. In other words. Section 19 of the Tenancy Act specifically postulates that the surrender/relinquishment shall be only in favour of the landholder but not to third parties. The so called relinquishment of rights u/s 19 of the Tenancy Act, in favour of third parties, particularly both by the landlord and protected tenants together is an absurdity and also can be called as contrary to the very object of the Tenancy Act - the Tenancy Act being a beneficial legislation.

62. From the above, it is further clear that the landholder and the purchaser together had got over two mandatory provisions in a methodically and make believe manner, even during the subsistence of the judgment in W.P. No. 4059 of 1982, dated 15-7-1987, passed by a learned single Judge of this Court, as confirmed by a Division Bench of this Court through a judgment in W.A. No. 1402 of 1987, dated 5-1-1993, that too without there being any right to the tenant to alienate as prohibited u/s 30 of the Tenancy Act.

63. In Babu Parasu Kaikadi (Dead) by Lrs. Vs. Babu (Dead) through Lrs., , the apex Court held at paragraph Nos. 12 and 13 as under:

"Paragraph No. 12:--In the case of Dhondiram Tatoba Kadam Vs. Ramchandra Balwantrao Dubal (Since Deceased) by his Lrs. and Another, , however, a somewhat contrary view was taken by this Court while interpreting the said provision. This decision was rendered by a Bench of three Judges and one of them disagreed with the majority judgment. The majority held that any voluntary surrender would be a valid surrender. It was held that voluntary giving up of possession would not amount to dispossession unless the law provides for

it and the provisions should be construed liberally. It may be pointed out that this Court while holding so, only considered the provisions of Section 32(1-B) of the Act and did not refer to Sections 15 and 29(2) of the Act which mandated its compliance for a valid surrender.

Paragraph No. 13:--The learned Judges although touched upon the question as regards obtaining legal possession, they unfortunately failed to notice the mandatory provisions of Sections 15 and 29 of the Act. Once it is held that the provisions of Sections 15 and 29 are mandatory, it goes without saying that possession obtained by the landlord in violation of such mandatory provisions would be illegal. A statute, as is well known, must be read in its entirety. The expression "dispossession" having regard to the text and context of the Act cannot be given its natural meaning. The High Court arrived at a finding of fact that the appellant herein had satisfied all the requirements as contained in Section 32(1-B) of the Act. The High Court, however, relying on or on the basis of the decision of this Court in Dhondiram Tatoba Kadam dismissed the appeal of the appellant. The High Court, as noticed, hereinbefore, however, felt that the question raised is of great general importance."

(emphasis supplied)

64. In Kotaiah and Another Vs. Property Association of the Baptist Churches (Pvt.) Ltd., , the apex Court while dealing with the scope of Section 38-A of the Tenancy Act, at paragraph No 18, held thus:

"Paragraph No. 18:--In sum....

(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, 1972, relating to the District where the lands in question are situated. It as 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 the 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."

65. I draw the inspiration in order to give the above reasoning from the decision rendered by the apex Court in *Babu Parasu Kaikadi v. Babu* (supra) wherein it was held that "if the provisions are mandatory in nature, it goes without saying that possession obtained by the landlord in violation of such mandatory provisions would be illegal."

66. While holding so. Their Lordships of the apex Court referred to *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, , in which case the question that had fallen for consideration was - whether the alleged surrender by the tenant was valid? While interpreting Section 5(3)(b) and Rule 2-A of Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948) and held that "the amendment under challenge therein was brought with a view to protecting the tenant on two fronts against two types of danger, one against possible coercion, undue influence and trickery proceedings from the landlord, and the other against the tenant's own ignorance, improvidence and attitude of helpless self-resignation stemming from his weaker position in the tenant-landlord relationship and therefore, Sections 15 and 29 are mandatory in nature and any departure from this would make the surrender invalid. It was also held that the imperative language, the beneficent purpose and importance of these provisions for efficacious implementation of the general scheme of the Act, all unerringly lead to the conclusion that they were intended to be mandatory."

67. In view of the foregoing observations, reasoning and following the decisions of the apex Court in *Babu Parasu Kaikadi v. Babu* and *Kotaiah v. Property Assocn. of the Baptist Churches (Pvt.) Ltd.* (supra) and also this Court *S. Rangaiah and Ors. v. Collector and Ors.* (supra), I am of the view that the impugned order, dated 9-12-2003, passed by the Joint Collector, Ranga Reddy District, is liable to be set aside and consequently, the order, dated 28-4-2001, passed by the Revenue Divisional Officer, Chevella Division, Ranga Reddy District, is liable to be upheld.

68. In the result, the Civil Revision Petition No. 6708 of 2003 is allowed, the impugned order, dated 9-12-2003, passed by the first respondent - Joint Collector, Ranga Reddy District, is set aside and consequently, the order, dated 28-4-2001, passed by the second respondent - Revenue Divisional Officer, Chevella Division, Ranga Reddy District, is upheld. However, there shall be no order as to costs.

69. In view of the order passed allowing CRP No. 6708 of 2003, the C.R.P. No. 1200 of 2003 becomes inconsequential and no further orders need be passed in the same.

70. Accordingly, C.R.P. No. 1200 of 2003 is dismissed. However, there shall be no order as to costs.

71. The interlocutory applications, if any, pending in both the civil revision petitions are hereby closed.