
(2004) 02 AP CK 0100

In the Andhra Pradesh High Court

Case No : Writ Petition No. 840 of 2004

Kosigi Yadaiah and Another

APPELLANT

Vs

Deputy Collector and Others

RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 32, 40

Citation : (2004) 2 ALD 497 : (2004) 3 ALT 261

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Tulasi Das, for the Appellant; Government Peader for Revenue for Respondent No. 1, A. Sudarshan Reddy and A. Giridhar Rao, for Respondent Nos. 7 to 10, for the Respondent

Final Decision : Dismissed

Judgement

L. Narsimha Reddy, J.—Petitioners filed an application u/s 40 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short "the Act") for grant of succession certificate, before the Deputy Collector and Mandal Revenue Officer, Saroornagar-the 1st respondent herein. It is their case that their late father Durgaiah was protected tenant in respect of land in Sy.Nos. 109, 110 and 111 of Gaddiannaram Village and since he died, they are entitled to be recognized as his legal heirs. Along with the claim petition, they have also filed an application u/s 151 CPC to grant interim orders to protect the nature of the land. The 1st respondent passed an order dated 20-9-2003 directing the parties to the proceedings to maintain status quo. At the instance of 6yRespondents 2 to 10, the 1st respondent had modified the interim order on the ground that he has no jurisdiction to pass such orders.

2. The petitioners have filed this writ petition seeking a declaration that it is competent for the 1st respondent to pass orders u/s 151 CPC while dealing with the applications under the Act, it has got the power to regulate the procedure

and that it is competent for the 1st respondent to resume the land in occupation of persons, other than the legal heirs of a protected tenant. The petitioners contend that the 1st respondent is conferred with the statutory powers to adjudicate upon the entitlement of the applicants as regards the land and the power to grant interim orders is incidental thereto. Reliance is placed upon the judgment of the Supreme Court in V. Sanjeevaraya Mudaliar Vs. N.A. Raghavachary, .

3. On behalf of the Respondents 7 to 10, a counter-affidavit is filed stating that the land under their occupation was never the subject-matter of any tenancy and that having regard to the nature of the proceedings u/s 40 of the Act, there cannot be any interim order.

4. Heard the learned Counsel for the petitioners, learned Government Pleader for Revenue and the learned Counsel for the Respondents 7 to 10.

5. Section 40 of the Act empowers the Mandal Revenue Officer to adjudicate upon the succession to a protected tenant. Petitioners have filed such an application claiming that they are the legal heirs of a protected tenant by name Durgaiah. The adjudication to the same is pending before the 1st respondent. Petitioners have also filed an application seeking interim orders. The 1st respondent granted an order on 20-9-2003 directing both the parties to maintain status quo.

6. While the representative of the owner of the land filed W.P. No. 22593 of 2003 before this Court, the Respondents 7 to 10 filed an application before the 1st respondent himself, feeling aggrieved by the interim orders dated 20-9-2003. This Court allowed W.P. No. 22593 of 2003 through its order dated 30-12-2003 holding that the proceedings u/s 40 of the Act are comparable to the original petitions filed before the civil Court for grant of succession certificates and being declaratory in nature, do not contemplate any interim orders, and the order dated 20-9-2003 passed by the 1st respondent was set aside insofar as it related to the petitioner in the said writ petition. The application filed by the respondents 7 to 10 was taken up by the 1st respondent and through orders dated 7-11-2003, he had modified the interim orders dated 20-9-2003. It is in this back ground that the matter needs to be examined.

7. It is no doubt true that every authority conferred with the power to adjudicate has an incidental power to pass interim orders. It has been so held by the Supreme Court in V. Sanjeevaraya Mudaliar v. A. Raghavachar's case (supra). Here, there is no dispute that the 1st respondent is conferred with the power to pass interim orders in the proceedings initiated before him under the provisions of the Act. Even in the absence of specific provision, such a power can be inferred. The main question is as to whether the nature of the proceedings permit of passing any such orders.

8. This Court has already taken the view that the proceedings u/s 40 of the Act are comparable to the suits or original petitions filed for grant of a succession

right which are declaratory in nature. It is only after the status of the applicants in such proceedings is decided, that they can be said to be entitled for any rights vis-a-vis any property held by the person whose successors they claim to be. Till such an exercise is undertaken, the applicants in such proceedings cannot be clothed with any rights. Consequently, all the rights of persons who are in possession of the property cannot be meddled with through interim orders. Such a course of action would be premature and would, in a way indicate the final outcome of the proceedings even while the same are pending. This aspect becomes significant in the context of the Act containing a separate provision namely Section 32 enabling the 1st respondent to restore the possession to the protected tenant or his legal heirs. Therefore, this Court is not inclined to accept the contention of the petitioners that it is competent for the 1st respondent to pass interim orders in the proceedings u/s 40 of the Act. .

9. Hence, the writ petition is dismissed. The 1st respondent was already directed to dispose of the application of the petitioners expeditiously and the same is reiterated in this writ petition also. No costs.