
(2001) 10 AP CK 0125
In the Andhra Pradesh High Court
Case No : CRP No. 5033 of 1999

Laxminarasamma (died) by LR	Vs	APPELLANT
Chakali Buchaiah (died) by LRs.		RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 30, 32, 38E

Citation : (2002) 3 ALD 688 : (2002) 1 ALT 336

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Mahipathy Rao, for the Appellant; Manthri Rama Rao, for the Respondent

Judgement

L. Narasimha Reddy, J.—In this civil revision petition (CRP), the petitioner challenges the validity of the order passed by the Revenue Divisional Officer, Mahabubnagar (for short "the RDO"), in file No. K/4545/88 dated 21-7-1989 as well as the order passed by the Joint Collector, Mahabubnagar district, in Case No. B7/29/1989 dated 9-8-1999, wherein the order of the RDO, dated 21-7-1989 is confirmed.

2. The petitioner is the owner of the land in Sy. Nos. 123/2, 140, 141, 199, 200 and 201 of Kammadanam village, Farooqnagar Mandal, Mahabubnagar district. The respondents are the recorded protected tenants in respect of the said lands under the provisions of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the Act"). The respondents approached the RDO for grant of Ownership Certificate u/s 38-E of the Act. The RDO through his letter dated 21-7-1999 granted the same. The petitioner challenged the order of the RDO by way of appeal before the Joint Collector u/s 90 of the Act. The appeal was dismissed through order dated 9-8-1999. Hence the present revision.

3. Sri K. Mahipathi Rao, the learned Counsel for the petitioner submits that the petitioner initiated the proceedings under Sections 19 and 32 of the Act for

termination of the Tenancy. He submits that the Tahsildar, Shadnagar, after conducting an enquiry and after issuing notices to the respondents passed an order dated 13-7-1976, terminating the tenancy of the respondents in respect of the subject lands and against that order the respondents preferred an appeal before the Joint Collector and the same is pending. Once the tenancy is terminated, the question of granting Ownership Certificate u/s 30 of the Act does not arise. He further submits that when the respondents approached the RDO on an earlier occasion for grant of Ownership Certificate u/s 38-E of the Act, the application was returned on the ground that the same cannot be entertained in view of termination of the tenancy and it was observed that they can renew the request only if the order dated 13-7-1977 passed by the Tahsildar, Shadnagar, terminating the tenancy, is set aside in appeal. In that view of the matter, the orders passed by the RDO and the Joint Collector which are under challenged cannot be sustained.

4. Sri Mantri Rama Rao, the learned Counsel for the respondents, on the other hand, submits that vesting of the land in the tenants u/s 38-E of the Act is automatic and it does not need initiation of proceedings. He submits that the only circumstance that can prevent such vesting is the pendency of the proceedings under Sections 19 and 32 of the Act against the tenants either before the primary Tribunal or the appellate Tribunal as on 1-1-1973 and inasmuch as the application filed by the petitioner for termination of tenancy was subsequent to 1-1-1973 and, at any rate, since no proceedings under Sections 19 and 32 of the Act were pending before the authorities as on 1-1-1973, there was nothing to prevent or stop the vesting. Since the lands in question already stood vested in the tenants, what needs to be issued by the RDO was only a formal certificate. Therefore, there is no irregularity or illegality in the orders passed by the RDO and the Joint Collector.

5. The material facts are not in dispute. The respondents are recorded as protected tenants in respect of the lands in question. It is also a matter of record that at the instance of the petitioner, the Tahsildar, Shadnagar passed an order dated 13-7-1976, terminating the tenancy for non-payment of rents. This order was passed u/s 32 read with Sections 19 and 28 of the Act. The respondents preferred two appeals being B7/278/76 and B7/282/76 before the Joint Collector u/s 19. The appeals are still pending. The respondents approached the RDO for issuance of Ownership-Certificate u/s 38-E of the Act in respect of the very lands in the year 1979. On 19-4-1979, the RDO returned the said petition on the ground that the tenancy was already terminated by the Tahsildar by an order dated 13-7-1976 for non payment of rents, that the appeals preferred by the protected tenants before the Joint Collector are pending and that unless the matter is finally decided, the question of considering the rights u/s 38-E of the Act does not arise. The application was closed at that stage and the respondents were permitted to renew their request after disposal of the appeal. It is not disputed that the appeal has not been disposed of. The order dated 19-4-1979 passed by the RDO has not been challenged and it became final.

6. The respondents approached the RDO once again in the year 1989 i.e., after a decade with the same request. The objection that was taken earlier was not at all referred to or dealt with. It was not the case of the respondents that the order of the Tahsildar, Shadnagar, dated 13-7-1976 terminating the tenancy has been set aside.

7. The contention of the learned Counsel for the respondents that the jurisdiction of the authorities under the Act to entertain applications for termination of tenancies of protected tenants is impliedly barred from 1-1-1973 is too difficult to be accepted. At any rate, that aspect was not raised before the Tahsildar, Shadnagar, when he was adjudicating upon the application filed by the petitioner under Sections 19 and 32 of the Act. Whatever may be strength of that plea, as on the date on which, the RDO has passed order granting Ownership Certificate, or for that matter today also, the tenancy in favour of the respondents stood terminated and the appeal is pending. Till such time the order is set aside, the things cannot be reversed. When the RDO had taken a view earlier stating that as long as the order terminating the tenancy is there the question of grant of Ownership Certificate does not arise, it was not open to him to entertain the application and issue certificates even while the same state of affairs and same set of facts continue to exist. Neither the RDO nor the Joint Collector has adverted to the order of cancellation of tenancy in their respective orders. The plea raised in this revision by the learned Counsel for the respondents does not appear to have been raised before or dealt with by the RDO or the Joint Collector. In my view, the orders cannot be sustained either on facts or in law. Accordingly, the order passed by the Revenue Divisional Officer, Mahabubnagar in file No. K/4545/1988, dated 21-7-1989 as well as the order passed by the Joint Collect, Mahabubnagar District, in Case No. B7/29/1989 dated 9-8-1999, are set aside and the CRP is allowed. It is however observed that the respondents shall be at liberty to renew their applications depending on the outcome of the appeals preferred by them against the order of the Tahsildar, Shadnagar, dated 13-7-1976. No costs.

8. After the judgment is pronounced, Sri Rama Rao, learned. Counsel for the respondent, submitted that a direction may be issued to the Joint Collector to dispose of the appeal preferred by his client against the order of the Tahsildar, Shadnagar dated 13-7-1976 at the earliest and his client may be permitted to take such pleas as are open to him under the Act. Learned Counsel for the petitioner Sri K. Mahipathi Rao did not object for a direction in this regard.

9. Accordingly, there shall be a direction to the Joint Collector, Mahabubnagar to dispose of the appeal preferred by the respondent herein against the order dated 13-7-1976 passed by the Tahsildar, Shadnagar within a period of two months from the date of receipt of the order. The Joint Collector shall issue notices to both the parties. It shall be open to the parties to take such pleas as are open to them either in support of or in opposition to the order under appeal before the Joint Collector.