
(2004) 11 AP CK 0121

In the Andhra Pradesh High Court

Case No : CRP No's. 3432, 3895 and 3900 of 2004

M. Keshavulu and Others

APPELLANT

Vs

M. Yellamma (died) by LRs. and Others

RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 44

Citation : (2005) 1 ALD 104 : (2005) 1 ALT 502

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : N. Vasudeva Reddy, for the Appellant; D. Prakash Reddy and T. Srikanth Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—These three revisions, though filed under different provisions, arise between the same parties, and in relation to the same subject-matter. Hence, they are disposed of, through a common order.

2. The petitioners are the legal representatives of late Kurmaiah. He was recorded as the protected tenant, in respect of Ac. 12-13 guntas of land, in Survey Nos.1032, 1033 and 1034 of Mahabubnagar Revenue Village and District. One Sri Maddur Chinnaiah was the land holder. The respondents in C.R.P. Nos.3432 and 3900 of 2004 are his legal representatives. An extent of Ac.2-00 gts. was sold, in favour of one Mr. Venu Gopal the sole respondent in C.R.P. No. 3895 of 2004, through sale deed dated 11.6.1975. Another extent of about three acres out of the said land in the three survey numbers was acquired by the Government, for house sites.

3. The petitioners filed an application before the Mandal Revenue Officer, Mahabubnagar (for short "the M.R.O") u/s 32(1) of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the Act"), for re-delivery of possession in their favour, of the land purchased by Mr.

Venu Gopal. This application was allowed. Mr. Venu Gopal filed an appeal before the Joint Collector, Mahabubnagar. It was dismissed through orders, dated 2.11.1998. Aggrieved thereby, he filed C.R.P.No.5189 of 1998, before this Court.

4. The petitioners filed an application before the Land Acquisition Officer (L.A.O) to refer the matter relating to apportionment of compensation, payable for the acquired land of 3 acres, to the Civil Court, u/s 30 of the Land Acquisition Act, 1894 (for short "L.A. Act"). The L.A.O did not accede to the request. He paid compensation to the respondents, and at their instance, referred the matter to the Civil Court, u/s 18 of the L.A. Act. The petitioners made an effort, to get themselves impleaded, in the O.P, but in vain. Ultimately, they filed O.S.No.107 of 1989, in the Court of II Additional District Judge, Mahabubnagar, for declaration as to their entitlement, to receive 60% of the compensation paid for the acquired land. They filed I.A.No.1121 of 1998, under Order 38, Rule 5 C.P.C for attachment of the amount paid towards compensation and for a consequential injunction, restraining the respondents from withdrawing the amount. The LA was dismissed through orders, dated 6.1.1999. The petitioners filed C.R.P. No. 622 of 1999 against the same.

5. C.R.P. No. 5189 of 1998 and C.R.P. No. 622 of 1999 were heard together, by this Court. It was observed that the plea raised by the respondents as to surrender of tenancy by late Kurmaiah, and the resultant termination was not taken into account, by the M.R.O. and the Joint Collector, in the proceedings initiated by the petitioners, u/s 32 of the L.A. Act. It was also observed that the respondents herein were not afforded adequate opportunity in the proceedings. In that view of the matter, the orders passed by the Mandal Revenue Officer, and the Joint Collector, were set aside, and the matter was remanded to the Joint Collector, to be considered and disposed, as though, it is a proceedings, u/s 38E(5) of the Act. The order in LA. No. 1121 of 1998 was also set aside, and a direction to maintain status quo, as regards the withdrawal of 60% of the compensation, was issued. The trial Court was directed to take up the application after disposal of the proceedings before the Joint Collector.

6. When the proceedings were pending before the Joint Collector, in relation to restoration of possession of the land from Mr. Venu Gopal, on remand, the petitioners filed another application before the M.R.O., for restoration of the remaining land from the respondents i.e., L.Rs of landholder, u/s 32 of the Act. The respondents pleaded that the tenancy stood terminated, u/s 44 of the Act, with the consent of the parties, way back, in the year 1958, and that the application u/s 32 of the Act, cannot be maintained. The M.R.O accepted this contention and rejected the application of the petitioners through his orders, dated 20.1.2004. Aggrieved thereby, they preferred an appeal before the Joint Collector.

7. The Joint Collector took up the said appeal as well as the proceedings, pending before him consequent on remand. He found that the tenancy in favour of the ancestors of the petitioners stood terminated, way back, in the year 1958, and

that their claims cannot be entertained u/s 32 of the Act. Through a common order dated 29-7-2004, he rejected the applications of the petitioners. C.R.P. No. 3895 of 2004 is filed against the order passed by the Joint Collector, insofar as it relates to the 2 acres of land purchased by Mr. Venn Gopal. C.R.P. No. 3900 of 2004 is filed against the order passed by the Joint Collector affirming the order passed by the M.R.O, in an application filed by the petitioners against the legal representatives of the landholder.

8. The petitioners filed I.A. No. 93 of 2004 under Order 6, Rule 17 C.P.C., in O.S. No. 2 of 1998 seeking amendment of the prayer. The application was dismissed through orders, dated 16.7.2004. The C.R.P. No. 3432 of 2004 is filed against that order.

9. Sri TV. Vasudeva Reddy, learned Counsel for the petitioners submits that his clients are protected tenants in respect of the entire land of Ac. 12.30 gts., as is evident from various revenue records, such as khasra pahani, and that they were entitled to be restored the possession of the same. He submits that the plea of surrender or termination of the tenancy raised by the respondents does not accord with the provisions of the Act, and that the various proceedings or orders relied upon by them are not genuine. He contends that it is only at a later point of time, that the respondents came forward with the plea of surrender of tenancy, said to have taken place in the year 1958, that too on the basis of the xerox copies. Learned Counsel also submits that the so-called surrender does not accord with the procedure prescribed u/s 19 of the Act, and as such, cannot be taken into account.

10. Sri D. Prakash Reddy, learned Senior Counsel for the respondents submits that late Kurmaiah was never a cultivating tenant over the lands and that he was engaged for the purpose of watch and ward. He contends that when it was noticed that the name of Kurmaiah was entered in the records as the protected tenant, late Chinnaiah, the landholder, initiated proceedings u/s 44 of the Act, and during the pendency of the proceedings, the parties entered into a compromise with the intervention of elders and the tenancy was terminated in view of the settlement between them. He submits that the documents submitted by the respondents are genuine and a presumption needs to be drawn in their favour, having regard to the fact that they are more than 40 years old. He also submits that the entries in Kasara Pahani were made at a time when the tenancy was subsisting and there is nothing on record to show that the tenancy continued after it was terminated in the year 1958.

11. The dispute between the parties turns much on the effect of the various provisions of the Act and the proceedings issued thereunder. There are certain facts and events, as regards which, there is no serious dispute between the parties. They are, that late Maddur Chinnaiah was the holder of the land in question and that the name of late Kurmaiah, the ancestor of the petitioners, was recorded as protected tenant in respect of the said lands. The controversy is as to whether late Kurmaiah continued to be the protected tenant till his death.

If he continued to be a tenant, the petitioners were entitled to succeed to the same and for restoration of possession, apart from, sharing the compensation for acquired lands. The respondents plead that the tenancy was terminated through an order passed in the proceedings initiated u/s 44 of the Act.

12. A protected tenant in the Act is conferred with the rights of very far reaching consequences. Subject to the fulfilment of the conditions u/s 38-E, such a tenant would, in fact be entitled to be conferred with the rights of ownership. The Act contemplates only two situations where the tenancy can be terminated. The first is u/s 19 and the other is u/s 44. Apart from providing for the various acts and omissions on the basis of which the tenancy can be terminated, Section 19 provides for surrender of tenancies also. The manner in which a tenancy can be surrendered is stipulated under sub-section (1) thereof. u/s 44, the tenancy can be terminated independent of any acts or omissions on the part of the tenant, or surrender of the same by him. This section deals mostly with the necessity of the landlord, to resume the land. Sub-sections (1) to (3) thereof prescribe the extents of land that the landlord or the tenant, as the case may be, can hold, in the context of termination of the tenancy. While the authority to certify or endorse the surrender of tenancy u/s 19 is the Tehsildar, the authority conferred with the power to terminate the tenancy u/s 44 is the Deputy Collector. If the Deputy Collector is satisfied as to the conditions pleaded by a landlord for termination of the tenancy, he can pass appropriate orders.

13. The petitioners plead that the tenancy was never terminated or surrendered. According to them, the entries in kasara pahanies for the year 1954-55 disclose that late Kurmaiah continued to be the protected tenant. It is also their case that in the subsequent revenue records, they were shown as the protected tenants. The respondents placed before the Mandal Revenue Officer as well as the Joint Collector certified copies of the order passed on the same day, terminating the tenancy, the original of compromise between Kurmaiah and Chinnaiah, dated 24-4-1958, statement of Kurmaiah, in the said proceedings. If the said proceedings are true and genuine, there does not exist any basis for the claim of the petitioners.

14. Learned Counsel for the petitioners expressed serious doubt about the genuinity of these proceedings, pointing out certain discrepancies. The main grievance was that the appellate authority did not provide any opportunity for the petitioners to raise objections as to the validity of these documents. It was in this context that an order was passed by this Court on 18-8-2004, directing that the respondents shall place the originals of the documents relied upon by them before the appellate authority, who in turn shall verify the same with reference to the concerned records, duly giving an opportunity to the petitioners and record findings. Pursuant to the same, the respondents submitted the documents referred to above, before the District Collector, Mahabubnagar, who held the charge of the post of Joint Collector also. The petitioners were put on notice. He summoned the available records and after hearing both the parties, he submitted

a report dated 23-10-2004 before this Court. The District Collector referred to each and every document, the nature of objections raised by the petitioners and recorded findings, duly furnishing reasons, in support of them. The petitioners have filed objections to the findings before this Court to the findings recorded by the Collector.

15. Among the several documents, the original of the settlement between the parties, the application filed before the Deputy Collector for termination of the tenancy and the order passed therein are important. It is a matter of record that the application filed by late Chinnaiah u/s 44 was dealt with in File No. D/885/57. On 24-4-1958 a settlement has taken place between the landholder and the protected tenant, in the presence of as many as 12 panchas. It was agreed therein that on payment of a sum of Rs. 748/-, the tenant shall not object for the termination of the tenancy. It was signed by both the parties, and 12 panchas. In view of this development, an application was filed by the Counsel for the tenant, who supposed to withdraw from the land. The tenant appeared before the Deputy Collector and he was identified by his Counsel. After verifying from the party, the Deputy Collector passed the following order:

"Parties present through pleaders. The defendant has appeared in person and admitted before me that he has surrendered his tenancy right voluntarily to the landholder and has requested to cancel the Tenancy Certificate issued to him. Hence issue order to the Tahsildar, Mahabubnagar to cancel the Tenancy Certificate issued in the name of the defendant and to delete the name of the defendant from the Tenancy Register. Issue order accordingly and close the file. Inform the parties present accordingly."

16. While the compromise, dated 24-4-1958 was filed in original, the application and order dated 29-4-1958 are the certified copies. The date of submission of application of certified copy etc., are written on their reverse. The main ground of attack of these documents is that when the petitioners applied for the certified copies of the same, the concerned authority endorsed that the file is destroyed. In his report, dated 23-10-2004, the Collector narrated the fact that the records of these category of files are required to be destroyed after 10 years. Reference was made to the movement of the file bearing No. D/885/57 from the distribution register at Sl. No. 867. Verification of the said register, which is still available, disclosed that the File D/885/57 was received from the Office of Deputy Collector in the Tehsildar office, Mahabubnagar on 30-4-1998. Nothing is stated to doubt the genuinity of these records.

17. One fact, which needs to be taken note of, is that Section 90 of the Evidence Act provides for presumption as to the genuinity or correctness to be drawn in respect of documents which are more than 30 years old. The only requirement is that such documents should emanate from proper source. If anyone doubts the genuinity or correctness of the same, it is for him to lead evidence and to disprove the same. Section 90 gets attracted in respect of the documents referred to above. The petitioners have not chosen to place any material, either

before the appellate authority, or before this Court to disprove the same. An effort was made to convince this Court that the seal of the Office of Deputy Collector put on the order, dated 29-4-1958 is not genuine, by making a comparison with a seal on a certified copy of the proceedings dated 31-3-1958, in Proceedings No. D/828/57. A perusal of the same discloses that the seal contained therein is that of the Assistant Collector, whereas the one on the order dated 29-4-1958 is that of the Deputy Collector. Out of 12 panchas mentioned in the compromise dated 24-4-1958, at least, some may still be alive, or there may be persons acquainted with the signatures of the panchas. No effort was made to examine any of them. The signatures or thumb impressions of the 12 panchas and 2 parties on the compromise, are not disputed, on any ground. Therefore, this Court does not find any basis to doubt the correctness and genuineness of the proceedings referred to above.

18. Once it has emerged that the tenancy between late Chinnaiah and Kurmaiah was terminated through proceedings dated 29-4-1958 u/s 44 of the Act, the petitioners do not have any right in respect of the said lands. They did not place any record to convince the appellate authority or this Court that they have been in possession of the land at any point of time, even after the termination of the tenancy. The petitioners are silent as to when they have been dispossessed at all. The fact that they are not in possession for a long time, conforms to the factum of termination of tenancy. Therefore, no interference is called for, with the orders under revision.

19. The CRPs are accordingly dismissed. There shall be no order as to costs.