
(2004) 07 AP CK 0012

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5204 of 2003

Mohd. Waheedulla Khan

APPELLANT

Vs

Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 05-07-2004

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 38, 38(7), 38E, 90

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Rules, 1951 — Rule 4

Citation : (2004) 5 ALD 593

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; Govt. Pleader for Revenue, O. Manohar Reddy, Counsel for Respondents 2-5 and N. Indrani, Counsel for Respondents 6-8, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This revision is filed challenging the order dated 30.09.2003, passed by the Joint Collector, Medak, in an appeal preferred u/s 90 of The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to "the Act"). The appeal in turn was filed against the certificate dated 5.3.2002, issued by the first respondent-Revenue Divisional Officer, Sanga Reddy, u/s 38-E of the Act, in favour of the respondents 2 to 5.

2. The petitioner holds land in various survey numbers of Ramachandrapur village and Mandal, Medak District, admeasuring about Ac.19.27 gts. Out of this land, respondents 2 to 5 were declared as protected tenants in respect of Ac.1-30 gts. of land in Sy. Nos.116, 117 and 124. On 5.03.2002, the first respondent issued a certificate of ownership u/s 38-E of the Act, in favour of respondents 2 to 5.

3. Complaining that respondents 2 to 5 cannot be issued certificate of ownership in view of the fact that the petitioner does not hold the extent of land indicated

under sub-section (7) of Section 38 of the Act, the petitioner preferred an appeal before the Joint Collector. The said appeal was dismissed. Hence, this revision.

4. Learned counsel for the petitioner, Sri Vedula Venkataramana, submits that for grant of ownership certificate u/s 38-E of the Act, the first respondent was under obligation to take into account the holdings of the landholder as well as tenant, as per sub-section (7) of Section 38, and without verification of this fact, the certificate was issued in favour of the respondents 2 to 5. It is his case that the holding of the petitioner is less than one holding, stipulated for the area under the relevant rules. He also submits that the first respondent did not choose to issue notice to the petitioner, which is mandatory under Rule 4 of the Rules framed u/s 38-E of the Act.

5. Sri O. Manohar Reddy, learned counsel appearing for the respondents 2 to 5 and Sri J. Aswin Kumar, learned counsel representing the respondents 6 to 8, who are the purchasers from respondents 2 to 5, submit that the first respondent had followed the procedure prescribed under the Rules, and only on being satisfied with the eligibility of the respondents 2 to 5, he had issued the certificate. They contend that the appellant authority has perused the entire record and did not find any material to interfere with the certificate issued u/s 38-E of the Act.

6. The Act provides for conferment of tenancy rights as well as ownership rights. Once a person is declared as protected tenant in respect of agricultural land, he is entitled to remain in possession and enjoyment of the same. The tenancy can be terminated only in accordance with the procedure prescribed under the Act. So far as the ownership rights are concerned, they can be conferred u/s 38-E of the Act, subject to verification of certain facts. The important facts for verification in this regard are, the holding of the landholder on one hand and holding of the tenant on the other. Sub-section (7) of Section 38 of the Act mandates that a protected tenant can be conferred with ownership right, if only the landholder is left out with atleast two family holdings, applicable to that area. Similarly, the holding of a tenant should not exceed one holding either as tenant or otherwise, after being conferred with the ownership rights. Then only, subject to these two conditions, ownership right can be conferred.

7. The question as to whether, the holdings of either the landholder or the tenant are to be taken into account, existing as on the date of commencement of the Act i.e. 10.06.1950, or coming into force of Section 38-E, being 1.11.1973; has been dealt by this Court, and it was held that for the purpose of ascertaining the holdings in the context of conferment of ownership rights, the relevant date is 1.1.1973. (See order in Civil Revision Petition No. 4117 of 1994, dated 22.06.2004.)

8. Since verification of facts from the point of view of the landholder is an important step in the entire exercise, Rule 4 of the Rules framed u/s 38-E of the Act mandates that the landholders shall be put on notice. There is nothing on

record in this case to show that the petitioner was put on notice. The first respondent has proceeded to confer ownership rights on the respondents 2 to 5, simply by publishing a public notice in that locality. Such a step hardly is a compliance with the mandate prescribed in Rule 4. Learned counsel for the petitioner has placed before this Court the notification dated 2.8.1954, issued by the Government prescribing the holdings referred to in Section 38-E of the Act. According to this notification, for Patancheruvu taluq of Medak District, the family holding is Acs.42-00 dry, or Acs.07-00 wet. The first respondent has not taken this into account while conferring ownership rights to respondents 2 to 5. The petitioner raised a specific ground before the appellate authority in this regard, being ground No. 11 and the appellate authority has referred to the contentions. However, he did not address himself to the crucial question as to whether the holding of the petitioner existing as on 1.1.1973, permitted conferment of ownership rights in favour of the respondents 2 to 5. Therefore, there is clear violation, both from the point of view of non-issuance of notice to the petitioner and non-verification of the holdings referred to u/s 38 of the Act.

9. For the foregoing reasons, the orders passed by the first respondent as well as the appellate authority are set aside and the matter is remanded to the first respondent for fresh consideration and adjudication. It is directed that the first respondent shall issue notice to the petitioner and take into account the factors stipulated u/s 38-E of the Act as well as Rules framed thereunder before conferment of ownership rights on the petitioner. Status quo obtaining as on today, in all respects shall be maintained, till the first respondent dispose of the matter.

10. Accordingly, the Civil Revision Petition is allowed. No costs.