

(1993) 10 AP CK 0022

In the Andhra Pradesh High Court

Case No : W.A. No's. 659 of 1990 and 566 of 1992

N. Sudershan Reddy and Others

APPELLANT

Vs

Smt. Kannamma (deceased by LRs) and others,

RESPONDENT

Date of Decision : 08-10-1993

Acts Referred:

Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 — Section 1(3), 2(1), 3(2), 4, 5

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 87

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 19, 34, 38E, 38F

Civil Procedure Code, 1908 (CPC) — Section 9

Constitution of India, 1950 — Article 226

Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 58(2)

Hyderabad Tenancy and Agricultural Lands Act, 1950 — Section 34

Citation : AIR 1994 AP 116

Hon'ble Judges : V. Sivaraman Nair, J;S. Dasaradha Rama Reddi, J

Bench : Division Bench

Advocate : A. Pulla Reddy and M.V.S. Suresh Kumar, K. Subrahmanya Reddy and M. Rama Rao and Govt. Pleader, for the Appellant; C. Mulla Reddy, for the Respondent

Judgement

Sivaraman Nair, J.—These two appeals arise from the Judgment of our learned brother M.N. Rao, J. in Writ Petition No. 5094/87, whereby he set aside the order of the District Collector, Ranga Reddy District in file No. B/6454/82 Dt. 20-1-1987 and remitted the matter to him for fresh disposal. The learned single Judge by his judgment dt 17-4-1990 had issued certain directions relating to the questions which are to be considered by the Collector, in disposing the matter afresh. The 3rd, 4th and 9th respondents in the Writ Petition have filed these appeals. We will refer to the parties as they were arrayed in the Writ Petition.

2. One Narsing Rao who was an inamdar (Makhtadar) of certain lands. In 1335 Fasli (1925) when survey was conducted, Surveys Nos.67/1 and 67/2 were assigned to his lands. In the later survey conducted in 1341 Fasli (1931) Survey

No. 279 was assigned to that inam land extending to Ac.49.39 guntas. Yet another survey was conducted in 1354 Fasli (1944) and Survey No. 279 was divided into Survey Nos. 349, 350, 351 and 352, aggregating Ac. 13.19 guntas. The remaining extent of Ac.36.20 guntas was assigned Survey Nos. 602 and 603. The inamdar Sri Narsinga Rao executed a perpetual lease for 99 years in favour of one Namassivayam on 27th Dai 1320 (1910) on an annual lease of Rs. 15/-. Neither the extent of the land nor the boundaries were mentioned in the lease deed. Only description was "Land Well, Gattu wet and dry", Kannamma, widow of Namassivayam, who was the first petitioner in the writ petition, executed a lease in 1350 Fasli (1940) in favour of Machikanti Veerayya, the 2nd respondent, on an annual rent of Rs. 15.15 annas. That lease was in respect of an extent of Ac.7.07 guntas. Radhamma, widow of the original Inamdar Narsing Rao, filed an application in 1963 before the District Revenue Officer, u/s 87 of the A.P. (Telan-gana Area) Land Revenue Act, seeking correction of Survey record to include her name as the owner in respect of survey Nos. 602 and 603, having an extent of Ac.36.20 guntas. Her case was that even though she was in possession till 1963, the military authorities took possession without her consent. The competent authority recommended correction of the records in her favour, to the Government. Veerayya, the lessee from the 1st petitioner Kannamma, executed a lease deed allegedly on the basis of occupancy certificate as a protected tenant under the provisions of the A.P. (T.A.) Tenancy and Agricultural Lands Act in respect of Ac.7.07 guntas. Ac. 1.00 of land out of Ac. 13.19 guntas covered by Survey Nos. 349 to 352 was acquired by the Government under the Land Acquisition Act. Radhamma, widow of the Inamdar Narsinga Rao, and Veerayya the protected tenant sold the remaining extent of Ac. 12.19 guntas on 5-11-69 in favour of N. Sudershan Reddy, the 3rd respondent. Kannamma, the 1st petitioner died on 3-10-88, leaving behind her two daughters who are petitioners 2 and 3. On the death of Radhamma, the Widow of the original Inamdar, the 4th respondent was impleaded as her legal representative. Veer-ayya, the lessee from Kannamma having died, his Legal Representatives were brought on record as respondents 5 to 8.

3. Petitioners 2 and 3 filed O.S. 35/1 of 1953-54 in the court of the Subordinate Judge, Hyderabad against their mother Kannamma and her lessee Veerayya, challenging the legality of the lease executed by Kannamma in 1940 in favour of Veerayya. They claimed to be the rightful owners of the land, since according to them, the above lease deed was void and inoperative, since the widow of Namassivayam had only limited interest over the land and hence she had no right to execute a permanent lease deed in favour of Veeraya. That suit was dismissed in 1947. Petitioners 2 and 3 filed A.S. 79/63 before the 1st Additional Judge, City Civil Court, Hyderabad. Veerayya filed cross-appeal as A.S. 152/63 in respect of certain findings of the trial Judge. The Additional Chief Judge held that the lease executed by Kannamma did not bind the plaintiffs (petitioners 2 and 3) but during the lifetime of Kannamma, the limited owner, her daughters were not entitled to bring an action for possession. The appellate court gave a declaration

that the permanent lease executed by Kannamma in favour of Veeraya was invalid beyond the life time of Kannamma. In 1975, Kannamma had instituted proceedings u/s 87 of the Inam Abolition Act before the Revenue Divisional Officer against Sudershan Reddy (3rd respondent) and Bhaskar Rao, the 4th respondent L.R. of the deceased Radhamma. She claimed occupancy rights over the entire land of Ac.49.39 guntas covered by old survey No. 279. Similar claims were made on behalf of respondents 3 and 4. The Revenue Divisional Officer rejected the claims of Kannamma and Sudershan Reddy, and accepted the claim of Radhamma in respect of Survey Nos. 602 and 603 to an extent of Ac.36.20 guntas. The Revenue Divisional Officer also held that Machikanti Veerayya would continue to be the protected tenant of S.Nos. 349 to 350 belonging to Kannamma. Kannamma and Sudershan Reddy, filed appeals before the District Collector, against that order. The District Collector remanded the matter for fresh consideration to the Revenue Divisional Officer, who made a request to the Collector for clarification so as to enable him to take further action. In his order dt. 4-10-79, the District Collector issued amended appellate order setting aside the order of the Revenue Divisional Officer dt. 30-11-79.

4. The Revenue Divisional Officer heard the matter afresh and passed orders on 18-2-1990 holding that only an extent of Ac.7.07 guntas of land were leased out by Narsing Rao, in favour of Namassivayam and that Kannamma, the widow of Namassivayam could transfer only that extent of Ac.7.07 guntas of Machikanti Veerayya. He held further that since Kannamma was not in possession of that land on 20-7-1955 when the inams stood abolished she was not entitled to claim occupancy rights. It was also held that Radhamma was entitled to hold occupancy rights in respect of S.Nos. 602 and 603 and the military authorities were not so entitled. The Revenue Divisional Officer held further that the 3rd respondent Sudershan Reddy was entitled to hold occupancy rights being the successor-in-interest of Radhamma.

5. In a further appeal, the District Collector passed orders on 13-10-81 stating that the extent of land leased out by Narsing Rao to Namassivayam in 1320 Fasli was Ac.49.39 guntas and not Ac.7.07 guntas. He therefore directed the R.D.O. to grant occupancy rights for the above said Ac.49.39 guntas covered by old S.No.279 in favour of Kannamma,

6. That order was challenged in W.P. 8923/81 by the 4th respondent. Sudershan Reddy (3rd respondent) filed W.P. 8870/81 challenging the same order. Jeevan Reddy, J., who heard the above two writ petitions, set aside the appellate order of the Collector and remanded the matter for fresh disposal directing the Collector to give notices to all the concerned parties viz., the Legal Representatives of Radhamma, Kannamma and Sudershan Reddy. He also directed that Machikanti Veerayya if he appears before him (the Collector), may also be heard. Specific directions as to the questions to be considered and decided were also given.

7. The District Collector, heard, the matter afresh and passed an order on

20-1-1987 holding that the original Inamdar had leased out only Ac.7.07 guntas of land to Namassivayam and that the perpetual lease executed by Kannamma, the widow of Namassivayam in 1350 Fasli in favour of Veerayya related only to the above extent of Ac.7.07 guntas. It was also held that the tenancy certificate issued to Veerayya under Sec. 34 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 was also in respect of the same area. He also held that the sale by Radhamma in favour of Sudershan Reddy and Veerayya under the sale deed dt. 5-11-69 was in respect of Ac. 12.19 guntas covered by S.Nos. 349, 350, 351 and 352 and that the above transaction was valid since the transferors were in possession and enjoyment of the land on 20-7-1955. The Legal Representatives of Radhamma were held to be entitled for occupancy rights in respect of Ac.36.20 guntas covered by Survey Nos. 602 and 603. Kannamma was held to be entitled for compensation in respect of Ac.7.07 guntas as successor-in-interest of the inamdar. That order was challenged by Kannamma in W.P. 5094/87. She died on 3-10-88 and her two daughters, petitioners 2 and 3 came on record as her Legal Representatives.

8. Sudershan Reddy, the 3rd respondent had sold Ac.5.20 guntas by three registered sale deeds viz., 15-3-88, 23-3-89 and 10-4-89 to the 9th respondent from out of the lands leased out by Kannamma in favour of Veerayya in the lease deed executed in 1350 Fasli. This land formed part of Ac.13.19 guntas in S.Nos. 349 to 352 after deducting one acre of land which was acquired by the Government.

9. The main contention raised in the Writ Petition by the petitioners was that the District Collector erred in misconstruing the lease deed of 1320 Fasli by Narsing Rao in favour of Namassivayam and that he erred in not locating and identifying the land on ground which could have been done only by conducting a local inspection by ascertaining the boundaries and extent of the land with reference to the description of the topography of the land as contained in the document. Petitioners urged that reliance on the judgment in A.S.79/63 was an obvious error since the lease deed which was the subject matter of the suit was the one executed by Kannamma, widow of Namassivayam in 1350 Fasli in favour of Veerayya and not the original lease deed of 1320 Fasli executed by Narsing Rao in favour of Namassivayam. The assumption that Veerayya was in possession on 20-7-55, the date of vesting under the Inams Abolition Act was also assailed. The further assumption that patta certificate was issued in favour of Veerayya u/s 38-F of the Tenancy Act was also challenged. The Sethwar proceedings which ended in favour of Radhamma, the widow of original Inamdar in respect of S.Nos. 602 and 603 was said to be not binding on the petitioners as Kannamma was not a party to those proceedings. It was urged further that Kannamma's claims for the entire extent of Ac.49.39 guntas were wrongly ignored by the Collector. It was submitted that whatever rights Veerayya had pursuant to the lease deed executed by Kannamma ceased to exist on the death of Kannamma on 30-10-1988 and the decree to that effect which petitioners 2 and 3 had obtained in A.S. 79/63 operated notwithstanding anything in the Inams Abolition

Act. The rights if any Sudershan Reddy had as a successor-in-interest of Veerayya also had met the same fate on the death of Kannamma, in view of the appellate decree in A.S. 79/63.

10. Respondents contended that the lease of 1320 Fasli by Narsing Rao to Namassivayam was only in respect of Ac.7.07 guntas and there was no basis for the claim of the petitioners to Ac.49.39 guntas. Kannamma's alleged possession on 20-7-55 was disputed. So was the claim that Kannamma had paid land revenue for any land other than Ac.7.07 guntas. Since the lease in favour of Veerayya was not terminated u/s 19 of the Tenancy Act, the transfer of land in favour of Sudershan Reddy was said to be proper. It was contended further that this factual position was not altered by the mistaken assumption made by the Collector in respect of grant of patta certificate to Veerayya u/s 38-E of the Tenancy Act. The appellate decree in A.S. 79/63 was nullified, when the Inam Abolition Act came into force. S.3(2)(h) of the Inams Abolition Act extinguished the right between the Inamdar and previous occupant (Kabiz-e-Kadim), permanent tenant, protected tenant or nonprotected tenant in respect of those lands with effect from 1-11-1973 and as on that date, the appellate decree in A.S.79/63 also ceased to have any effect. Even though Kannamma could have terminated the tenancy of Veerayya or her transferee Sudershan Reddy by giving six months' notice under S. 19 of the Tenancy Act, she had not done so; and therefore the appellate decree did not confer any enforceable right on the petitioners. The 9th respondent was concerned only with Ac. 5.20 guntas of land out of Ac. 7.07 guntas which was not the subject matter of the writ petition, since it was confined only to 42.32 guntas. The 9th respondent contended that the writ petitions are not entitled to any relief against the Society.

11. The learned single Judge considered the above contentions and found that the District Collector erred in mixing up the lease of 1320 Fasli granted by the Original Inamdar in favour of Namassivayam and the second lease granted by Kannamma, widow of Namassivayam in 1350 Fasli in favour of Veerayya and that the judgment in A.S.79/63 which related entirely to the later transaction was of no assistance in understanding the scope of the lease deed of 1320 Fasli. The learned single Judge also observed that the rights of Kannamma could not be defeated by resort to the Sethwar proceedings initiated by Radhamma, since the former was not a party to those proceedings. The learned single Judge also found that additional material papers filed by the petitioner in the writ petition did form part of the record of the District Collector and that they were referred to in the earlier order dated 13-10-81 passed by him and which was set aside by our learned brother Jeevan Reddy, J., in W.P. 8870 and 8923 of 1981. On a reference to those material documents, which the District Collector had ignored in passing the impugned order, the learned single Judge found that the impugned order was liable to be set aside, since there was material illegality and error apparent on the face of the record, warranting judicial review. On the next question as to what was the date of vesting of Inam lands in the State under the Hyderabad Abolition of Inams Act (Act 8 of 1955) which is now called the A.P. (Telangana

Area) Abolition of Inams Act, 1955, the learned single Judge held that there were two relevant dates viz., 20-7-55 when Cls. (a), (b), (c), (e) and (f) of S. 3, and 1-11-1973 the other clauses viz., (d), (g), (h) and (i), came into force.

12. The main ground urged by the appellants in W.P. No. 659/90 is that the learned single Judge erred in law in directing the District Collector to consider the matter afresh after having held that the transfer in favour of the first appellant by Sri Machi-kanti Veeraiah and late Radhamma was invalid. Counsel submitted that having entered a finding on this issue, there could not have been a direction to the Collector to consider "Whether the sale in favour of Sudershan Reddy is valid and defective and if so what rights accrue to him on that basis." Counsel submits that if the learned single Judge was to remand the matter for reconsideration, he should not have precluded consideration of all issues of fact and law without compelling the District Collector to decide the question only in one way.

13. We have perused the judgment with an anxiety to see whether this submission is sustainable. What seems to have happened is the parties joined issue on the question of validity of the sale and the lease by late Kannamma in favour of Machikanti Veerayya and the latter sale by late Radhamma, widow of the inamdar, along with the alleged tenant Machikanti Veerayya in favour of Sudershan Reddy of the land in question. The claim of Radhamma was based on the Sethwar proceedings of 1963 to which late Kannamma was not a party. Late Kannamma had produced before the District Collector evidence indicating that she was on record as a tenant till 1953 when the military authorities were alleged to have taken over the land. Reference was also made to the representation of Kannamma in July, 1953 to the "Garrison Engineer, Secunderabad, alleging that Veeraiah deceived her by obtaining her signature on a false paper stating that the land was disposed of to him. She requested for return of the land. The army authorities replied on 8-1-1954 stating that the lease in favour of Veeraiah was cancelled and that Veerayya was instructed to handover the well and adjoining land to MES. This was a crucial fact which the learned single Judge could not but advert to in view of the contentions on either side. These facts naturally had the effect of demolishing the claim of late Radhamma to be the person in possession on 20-7-1955. It is interesting to note that the name of late Radhamma was shown in the records as the person in possession only in 1971 when the Sethwar proceedings were finalised by the Revenue Divisional Officer. This fact was again clear from the letter of the military Estate Officer to late Kannamma on 27-9-1973.

14. Another ground which the petitioners had urged before the learned single Judge was that the findings contained in the impugned order of the District Collector were manifestly erroneous in fact and law. The learned single Judge could have set aside the order only on a finding that those assertion were correct. To come to that conclusion, the learned single Judge had to consider the grounds urged by the petitioners as also the defence of the respondents. He

could not have set aside the order, nor could he have remitted the matter for reconsideration, unless he entered a positive finding on the grounds urged by the petitioners. That alone is what the learned single Judge has done. We do not find any error in his approach. The case of the petitioners was that the 1st petitioner was not a party to the proceedings and therefore the findings therein did not bind her. It is elementary that an order which passed without notice to a party who was found to be in possession in 1953 and who had effectively corresponded with the Army authorities in 1953-54 on the basis of such possession could not bind that person. A finding in that regard was necessary for disposal of the writ petition. Late Smt. Radhamma claimed to be the successor of the Inamdar and the person in possession pursuant to Set war proceedings initiated in 1963. That claim was asserted in defence of the petitioners' claim. Even while remitting the matter for reconsideration, it was necessary that the learned Judge entered findings on this crucial issue. We do not find any illegality or impropriety in those findings,

15. Nor are we impressed by the submission that the findings entered by the learned single Judge against Machikanti Veerayya were in any manner illegal or improper. Admittedly, late Smt. Kannamma had only a limited estate and she could not have created a permanent lease of the properties which she was holding only for her life. Petitioners 2 and 3, daughters of Kannamma, had filed a suit impleading Kannamma and Veerayya as parties. That ended in a declaration that the lease in favour of Veerayya would enure only during the lifetime of Kannamma and thereafter it would be invalid. If Veerayya was lessee from a limited estate holder and Radhamma was not a person in possession, the lease in favour of Sudershan Reddy could not have been sustained. As indicated earlier, parties joined issue on all these aspects and the Court had no option except to consider the elaborate arguments raised on either side to come to a conclusion whether the power of judicial review should be exercised.

16. Another ground which the respondent urged was that Machikanti Veerayya had been declared as a "protected tenant under S. 34 of the Hyderabad Tenancy and Agricultural Lands Act, 1370 Fasli and he had also obtained a certificate under S. 38E of the Act. Counsel submits that in view of the above facts, the findings entered by the learned single Judge invalidating the sale by Machikanti Veerayya to the 1st appellant was illegal is unsustainable. We find that the learned single Judge has adverted to this submission. Apparently, in view of the emphatic submissions on the point of law, the learned single Judge had to examine that in great detail. He found that there was no such declaration that Machikanti Veerayya was a permanent or protected tenant. It was in that context that the Court found, as a matter of fact, that the claim of the respondents (present appellants) that proceedings were issued in favour of Machikanti Veerayya under S. 38E of the Act was factually incorrect. If Veerayya was not a permanent or protected tenant, as he could not have been in view of the judgment in A.S.79/63, all arguments based on that assumption that the right of the protected tenant Veerayya was unassailable had necessarily to fail. That is what

the learned single Judge has found, on an examination of the factual and legal aspects of the submissions which were urged before him. We do not find any error in the judgment of the learned single Judge on this count.

17. Counsel for the appellant submit that the learned single Judge should not have entered any finding against Machikanti Veeraiah and his successor-in-interest and assignees, since Veeraiah was a "permanent tenant" according to the lease deed of 1350 Fasli and he was a "protected tenant" under S. 34 of the Hyderabad Tenancy and Agricultural Lands Act of 1950. He submits that no Court has jurisdiction to grant any relief against a "protected tenant" and, therefore, the findings contained in the judgment in A.S.79/ 63 could not have any effect at all on the rights of Machikanti Veeraiah, from whom, Sudershan Reddy, the 1st appellant purchased the land in question. He submits further that Radhamma, the widow of the Inamdar having been found to be in possession even prior to 1953 in the Sethwar proceedings, was entitled to continue in possession, notwithstanding the abolition of inams under the Inams Abolition Act, 1955. The 3rd submission which he urged emphatically was that the findings contained in the judgment of Jeevan Reddy, J., while disposing of W.P. Nos. 8823 and 8870 of 1981 operate as res judicata and the learned single Judge could not have considered the matter afresh, particularly in relation to the rights of the appellants by reason of the date of vesting under the Inams Abolition Act, 1955. Another submission was that the petitioners were duty-bound to show that there was a manifest error in the description of the land in question and that obligation not having been discharged, neither the Revenue Divisional Officer nor the District Collector nor even this Court was entitled to go into the question of identity of the land and record findings in relation thereto.

18. Counsel invited our attention to the decision of the Supreme Court in Sone Valley Portland Cement Co. Ltd. Vs. The General Mining Syndicate Pvt. Ltd., . He also invited our attention to Bhimaji Shanker Kulkarni Vs. Dundappa Vithappa Udupudi and Another, , wherein the Court held that the exclusion of jurisdiction to decide the question as to whether "permanent tenants" or "protected tenants" being complete, such a question could be determined only by a Mamlatdar and not by any Civil Court. S.85A of the Bombay Tenancy and Agricultural Lands Act (Act 67 of 1948) barred the jurisdiction of the Civil Court to try a suit involving a dispute whether a person was a permanent tenant or a protected tenant. Since resolution of such dispute was entrusted only to the Mamlatdar, the Court held that if such an issue had to be settled, decided or dealt with by any other designated authority, the Civil Court would have no jurisdiction. Counsel submits that this decision is an authority for the proposition that the decree of the Civil Court in A.S.79/63 was inoperative against Veeraiah and his assignees.

19. We have perused the judgment with scrupulous care. We do not find anything in that judgment which precludes the Civil Court from considering the plea that the 1st petitioner's mother who was a owner of a limited estate had no power of competence to create a permanent lease in favour of Machikanti

Veerayya. We also find that the respondents were not able to prove either before the Revenue Divisional Officer or the District Collector or before the learned single Judge that Machikanti Veerayya was a protected tenant under S. 34 of the Act. They failed miserably to prove their assertion that certificate of permanent tenancy had been issued in favour of Veeraiah under S. 38E of the Act. Such a controversy involving a pretender tenant was not beyond the jurisdiction of the Civil Court. We are of the opinion that the decision in Bhimaji Shanker Kulkarni Vs. Dundappa Vithappa Udupudi and Another, has no application to facts of the present case.

20. Radhamma is said to have been the successor of the Inamdar. It is also asserted that she was in possession even prior to 1953 and the omission of her name as the person in possession was rectified in Sethwar proceedings. Counsel submits that the fact that she was the successor in interest of the Inamdar did not divest her of her possession by operation of the Inams Abolition Act, 1955. Support for this proposition is sought from Narayan Bhondeo Pimputkar and Another Vs. Laxman Purshottam Pimputkar and Others, . Counsel submitted that the effect of the Inam Abolition Act was to protect the possession of those who were in such possession on the date of abolition of the Inam including inamdars actually in possession, provided they satisfied other requirements of the Act, and it was not as if Inamdars who were otherwise entitled to continuance of possession should automatically be deprived of such possession. Reliance was placed on the observations in the active decision to the effect that even after coming into force of Gujarat Patel Watans Abolition Act, 1961, persons who were in possession of Watan lands and whose rights were extinguished under S. 4 of the Act, would still continue to be in possession, if they satisfied the requirements of Ss. 6, 7 and 10 thereof. Counsel submitted that Radhamma and her legal representatives continued to be persons in possession on the date of coming into force of the Inam Abolition Act and such possession was not impaired by any provision of that Act.

21. This submission assumes that Radhamma was the person in possession of the lands in question in addition to her capacity as Inamdar. That position is seriously disputed. The only material on which the reliance was placed was the Sethwar proceedings, which were initiated in 1963 and terminated in 1971. The learned single Judge has referred to the fact that Kannamma had claimed to be in possession even earlier to 1953 and the same was recognised in some measure by the military authorities of Se-cunderabad cantonment. If Kannamma was in possession as widow of the lessee/tenant Namasivayan, the claim of Radhamma for possession could not have been accepted as correct only on the basis of Sethwar proceedings initiated in 1963 without the junction of Kannamma. That is what the learned single Judge has found. Unless this factual basis is found in favour of Radhamma, the question of application of the rule in the above decision does not arise. We are of the opinion that the learned single Judge was right in holding that the Sethwar proceedings could not be used against Kannamma, since she was not a party. Since there was no other

material, apart from the Sethwar proceedings, to support the claim of Radhamma for possession, we cannot countenance her submission that apart from the capacity as Inamdar, whose rights were abolished under the Inams Abolition Act, she had an unimpaired right to continue in possession as she was in possession on the appointed date.

22. Counsel submitted that the learned single Judge should not have disturbed the assumptions and the findings contained in the judgment of Jeevan Reddy, J., in W.P. Nos. 8823 and 8870 of 1981. Reference was made to the decisions of the Supreme Court in *Daryao and Others Vs. The State of U.P. and Others*, ; *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.)*, *Andheri and Others*, ; *Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and Others*, . It is true that Jeevan Reddy, J., remitted the matter for consideration on certain assumptions and issued certain directions. The learned single Judge found that those findings were entered on the assumption that whole of the Inam Abolition Act had come into force on 20-7-1955. That assumption was contrary to facts and the decisions of the Supreme Court in *The State of Maharashtra Vs. Lazmen Abaji and Another*, and *Mohd. Shaukat Hussain Khan Vs. State of Andhra Pradesh*, .

23. We find that Jeevan Reddy, J., had directed reconsideration of the matter and the District Collector had entered findings in favour of the petitioners in respect of some of the most material issues. It was the correctness of those findings that was challenged before the learned single Judge. True it is that the principles of *res judicata* do apply to proceedings under Art. 226 of the Constitution of India also. But in a case where findings were entered and direction were issued ? ignoring binding precedents of the Supreme Court, it cannot be held that the Court was precluded from considering the matter again in the light of the correct principles which apply. This shall be far more so in cases where the Court ordered remand of the matter for fullfledged reconsideration. We are of the opinion that the decisions cited before us had no application for a situation like the present. May be principles of *res judicata* apply to orders made in different stages of the same proceedings, but that can hardly apply to a situation like the one we have here.

24. Yet another submission urged by counsel for the petitioner on a point of law was that even assuming that the petitioners had any right pursuant to the decree in A.S.79/63, that was extinguished when the Inam Abolition Act was brought into force with effect from 1-11-1973 by notification issued under S. 3(2)(h) of the A.P. Telangana Area Abolition of Inams Act, 1955. The appellants proceeded on the assumption that the Act was fully brought into force on 20-7-1955, and Machikanti Verrayya who was in possession on date was entitled to continue in uninterrupted possession. The controversy before the learned single Judge was whether 20-7-1955 or 1-11-1973 was the relevant date for the purpose of registration of persons who were in possession of erstwhile Inam lands. The learned single Judge went into the question of law as he was bound to and found that there were two relevant dates because of S. 1(3)(a) and (b) and S.2(1)(b)

of Inams Abolition Act. For the purpose of S. 3(2), Cls. (a), (b), (c), (e) and (f) came into force on 20-7-55 and other provisions of the Act came into force on 1-11-1973 as per the notification of the State Government. The learned Judge did not follow the judgment of Jeevan Reddy, J., in W.P. Nos. 8870 and 8923 of 1981 or the decision in Kesavuluv. Govt. of A.P. (1978) 1 APLJ (HC) 378; Veera Reddy v. R.D.O. 1980 LR 295; Narasimha Reddy v. Syed Aktar AH (1988) 2 ALT 136, in all of which, the relevant date for granting occupancy rights was assumed to be 20-7-1955. Counsel submitted that in case the learned single Judge was not inclined to agree with the decisions of other learned single Judges of this Court, he ought to have referred the matter to a Division Bench.

25. The learned single Judge found that there were two decisions of the Supreme Court viz., The State of Maharashtra Vs. Lazmen Abaji and Another, and Mohd. Shaukat Hussain Khan Vs. State of Andhra Pradesh, , both of which held that there could be differed dates of vesting. The learned single Judge therefore held that the decisions of this Court were per incurium; and therefore he need not refer the matter to a Division Bench.

26. A Division Bench of this Court in which one of us (Sivaraman Nair, J.) was a member, had occasion to consider the same question in Rameander Reddy v. District Collector, Hyderabad District (1993) 2 ANWR 84. The Bench came to the same conclusion after considering The State of Maharashtra Vs. Lazmen Abaji and Another, and Mohd. Shaukat Hussain Khan Vs. State of Andhra Pradesh, . We are of the opinion that the decisions of the learned single Judges of this Court assuming that there was only one relevant date of vesting viz., 20-7-1955 is no longer good law. We therefore overrule the decisions in Keshavulu v. Government of A.P. (1978 (1) APLJ (HC) 378), Veera Reddy v. R.D.O. (1980 Lawyers Reference 295) and Narasimha Reddy v. Syed Aktar Ali (1988 (2) ALT 136) on the above point. For the reasons stated in the judgment in Ramender Reddy (1993 (2) AWR 84) cited above, we have to hold that the learned single Judge was right in holding that there were two different dates of vesting viz., 20-7-55 and 1-11-1973.

27. Counsel for the appellants submitted that even if petitioners had any right pursuant to the judgment in A.S. No. 79/63, that could not survive the date of vesting viz., 1-11-73. The learned single Judge held that the provisions of Ss. 4 to S of the Inam Abolition Act for registration of persons in possession of inam lands was unaffected by the date of vesting. He also held that S. 33 of the Inams Abolition Act specifically saved the mutual rights and obligations of an Inamdar and his tenants to the extent to which they were not inconsistent with the express provisions of the Act. The rights which the petitioners had as tenants of the Inamdar could and therefore did continue even after 1-11-73 by virtue of the above saving provision. We hold that the learned single Judge was right in the finding in this regard.

27-A. Reliance is sought to be placed on Shri Inacio Martins, Deceased through LRs. Vs. Narayan Hari Naik and others, which dealt with the effect of the

amendment to Goa, Daman and Diu Agricultural Tenancy Act, 1964, with effect from 20th April, 1976, denying jurisdiction to Civil Courts to decide a question whether a person was a tenant or deemed tenant and left it to be decided exclusively by a Mamlatdar. The Supreme Court held that litigation subsequent to the amendment which was instituted in a Civil Court also fell within the exclusive jurisdiction conferred on the Mamlatdar, as provided in S. 58(2) of the above Act. We do not find anything in that decision which has the effect of nullifying judgments or decrees obtained prior to the commencement of the Act particularly in view of the provisions contained in S. 33 of the Inam Abolition Act.

28. We are of the opinion that the appellants (who were respondents in the writ petition) having urged various contentions of law and fact in elaborate detail before the learned single Judge are not right in finding fault with the judgment for the reason that the learned single Judge considered all such grounds. They did invite the findings of the learned single Judge. The fact that he obliged them by entering findings on all those various aspects is by itself no reason to assail that judgment in appeal. They took a calculated risk in urging all those contentions in the hope that the decision would be in their favour. They cannot now turn round and assert that the learned single Judge need not have entered findings on their specific plea. Without considering these various aspects, the learned single Judge could not have effectively disposed of the writ petition. Even otherwise, in the nature of the complicated questions of law which arose for consideration, it would have been improper for the learned single Judge to leave all such questions of law to be decided by the District Collector. We do not find anything wrong in the learned single Judge having adverted to all points which arose from the pleadings of parties and arguments of counsel.

29. As far as appellant in W.A.566/92 is concerned, his case must stand or fall with the case of the appellants in W.A.659/90. The learned single Judge has adverted to the fact that the 9th respondent obtained sale deeds dated 15-3-88, 23-3-89 and 10-4-89 in respect of Ac. 5.20 guntas of land out of Ac. 7.07 guntas covered by the permanent lease of 1350 Fasli in favour of Machikanti Veerayya, during the pendency of the writ petition and despite the interim order at 22-4-87 requiring the parties to maintain status quo as on that date. The learned single Judge has adverted to the contention raised on behalf of the 9th respondent that the petitioners sought relief only in respect of Ac. 42.38 guntas of land and no relief could therefore have been granted in respect of Ac. 5.20 guntas out of the remaining Ac. 7.07 guntas of land. The learned single Judge found that the proceedings for registration of tenancy under Ss. 4 to 8 of the Inams Abolition Act have yet to be finalised on remand and therefore the 9th respondent can raise all his claims in those proceedings.

30. We do not find any merit in the submission of the appellants (respondents in the writ petitions) either on facts to the limited extent necessary to justify the remand of the matter for reconsideration, or on the important legal aspects on which they invited a decision in the writ petition. Having invited such decisions

on facts and law in a keenly fought out legal proceedings it is more than unfair for the appellants to find fault with the learned single Judge for having considered their pleas and arguments on facts and law in sufficient detail. The appeals therefore fail and are hereby dismissed. The District Collector shall now consider the matter afresh in strict compliance with the direction and subject to the findings entered by the learned single Judge. We refrain from ordering costs, which we would have done in the nature of the plea of the appellants, due only to the fact that the matter has been remitted for reconsideration. Parties will suffer their respective costs.

31. Appeals dismissed.