courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/09/2026

(2012) 09 AP CK 0116

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3815 of 2011

Padala Pentaiah — APPELLANT

Vs

The Joint Collector-I, R.R. District at Lakdikapul, Hyderabad and Others — RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:
Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 32, 32(1), 38(e), 40, 40(2)
Constitution of India, 1950 — Article 141

Citation : (2013) 2 ALD 262 : (2013) 1 ALT 384

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Tulasi Das, for the Appellant; M. Rama Rao for Respondent No. 3 and None for Respondent Nos. 4 to 7, for the Respondent

Judgement

L. Narasimha Reddy

1. The petitioner and 12 others claiming to be the descendents of Baindla Balayya and Kadala Narsiga, filed separate applications u/s 32(1) and 40(2) of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short ''the Act'') before the Mandal Revenue Officer, Hayatnagar Mandal, Ranga Reddy District, 2nd respondent herein. It was pleaded that Balayya and Narsiga referred to above, were protected tenants in respect of about Ac. 10.00 of land in Survey Nos. 177, 178, 199, 326, 327 and 328 of Anmagal Village, Hayatnagar Mandal and after the death of the protected tenants, they have succeeded to the rights, in the land. They prayed for grant of succession u/s 40 of the Act. It was also pleaded that respondents 4 to 7 herein have dispossessed from the land, and accordingly, they made an application u/s 32 of the Act for restoration of the possession. The 2nd respondent passed an order, dated 08.03.2001 holding that apart from the 13 applicants before him, 21 others are the successors of the protected tenants. Three years later, an order was passed on 15.03.2004 allowing the application filed u/s 32 of the Act and directing restoration of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/padala-pentaiah-appellant-hash-the-...

possession of Acs. 5.26 guntas in Survey Nos. 326, 327 and 328, to them. It was mentioned that the tenancy in respect of the remaining land was surrendered.

2. The 3rd respondent, which is an association of the purchasers of plots carved out of the land in Survey Nos. 326, 327 and 328 filed appeals before the Joint Collector, Ranga Reddy District, 1st respondent herein u/s 90 of the Act challenging the orders passed under Sections 32 and 40 by the 2nd respondent. The 1st respondent passed an order dated 15.11.2005 setting aside the orders under appeal. He remanded the matters to the 2nd respondent for fresh consideration and disposal. The petitioner and 12 others filed C.R.P. No. 6864 of 2005 before this Court u/s 91 of the Act. The revision was dismissed through order, dated 12.09.2007. The 3rd respondent was directed to dispose of the matter remanded to him, on merits after giving notice to the affected parties.

3. On remand, the 2nd respondent passed an order dated 30.06.2008 allowing the applications filed under Sections 32 and 40 of the Act. Aggrieved by that common order, respondents 3 to 7 filed appeal u/s 90 of the Act before the 1st respondent. The appeal was allowed through order, dated 03.01.2011. The said order is challenged in this writ petition.

4. The petitioner contends that the view taken by the 1st respondent in the impugned order is opposed to settled principles of law. He submits that once an individual is declared as protected tenant, his legal heirs are entitled to succeed to the rights and that if the protected tenants or his legal heirs are dispossessed from the land, the Tahsildar is under obligation to restore the possession u/s 32 of the Act. It is also pleaded that the observations of the 1st respondent on the question of limitation or delay are contrary to the law laid down by this Court.

5. Sri Tulasi Das, learned counsel for the petitioner submits that the petitioner and other legal heirs of the protected tenants, being illiterates, were not conversant with the procedure prescribed by law and the delay in filing the application was treated as fatal by the 1st respondent. He submits that the 2nd respondent, on both the occasions has examined the matter and granted reliefs under Sections 32 and 40 of the Act. Learned counsel submits that the benefit conferred upon an individual under a Law, which is part of agrarian reforms, cannot be denied on technical grounds.

6. Learned counsel further submits that a Division Bench of this Court, in Sada and Vs. The Tahsildar, Utnoor, Adilabad District and Another,, categorically held that the concept of delay or adverse possession are totally alien to the proceedings under the Act and that the 1st respondent was not justified in setting aside the orders passed by the 2nd respondent on the ground that the application was filed belatedly. He further submits that the passing observation made by the Hon''ble Supreme Court in Ponnala Narsing Rao Vs. Nallolla Pantaiah and Others, was treated as ratio decidendi and the benefit under the Act was denied to the petitioner. He has relied upon other decided cases also.

7. Learned Government Pleader for respondents 1 and 2 submits that the 1st

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/padala-pentaiah-appellant-hash-the-…

respondent thoroughly verified the record in relation to the basic facts, such as the date of death of the so-called protected tenants, the nature of rights held by them, inordinate delay in filing the applications, and has passed the impugned order. He submits that even according to the petitioner, the land is already covered by quite large number of buildings and restoration thereof is totally impermissible.

8. Sri M. Rama Rao, learned counsel for respondents 3 to 7 submits that though the applications under Sections 32 and 40 of the Act were filed by 13 persons, the petitioner alone filed this writ petition. He contends that the applications filed under the said provisions were silent as to whether any certificate of protected tenancy was issued, when the so-called protected tenants died, and when the petitioners are said to have been dispossessed. He submits that without even mentioning the date of death of their ancestors, the petitioner and other persons filed application u/s 40 of the Act and the application filed u/s 32 of the Act is silent as to the nature of the land or the timing of dispossession.

9. Learned counsel further submits that while passing the order after remand, the 2nd respondent committed patent mistakes, such as treating the applications before him as those u/s 90 of the Act. He contends that the 2nd respondent was not clear as to the nature of relief being granted by him, much less the issues that fell for his consideration. He contends that in Ponnala Narsing Rao''s case (2 supra), the Hon''ble Supreme Court held that the delay in filing an application u/s 32 of the Act needs to be taken into account in the context of verifying the subsequent developments or accrual of rights to third parties and the said principle is ratio and not an obiter.

10. The Act is an important piece of legislation enacted by the erstwhile State of Hyderabad. It is part of agrarian reforms that were undertaken all over the country and was included in the IX Schedule to the Constitution of India. The Act provides for recognition of rights of a tenant of an agricultural land. If a tenant is found to be in possession of a land, as on the notified date, he is entitled to be recognized as "protected tenant". On such recognition, valuable rights accrue to him. Subject to fulfillment of certain conditions, he would be entitled to be issued ownership certificate u/s 38(e) of the Act. The Act makes it amply clear that rights of the tenants are inheritable.

11. The protection under the Act is so perfect and extensive that in case, a protected tenant or his successor is dispossessed from the land in respect of which he is declared as protected tenant, he can seek recovery of the same, by filing an application u/s 32 of the Act. There is no necessity of filing a suit for recovery of possession. A Full Bench of this Court in Sada''s case (1 supra), held that the principle of adverse possession does come in the way of granting relief u/s 32 of the Act. In the context of recognition of the successors or legal heirs of protected tenants also, a statutory mechanism is provided for u/s 40 of the Act, conferring the powers in this regard, on the Tahsildar.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/padala-pentaiah-appellant-hash-the-…

12. The petitioner and 12 others filed applications under Sections 32 and 40 of the Act, simultaneously before the 2nd respondent in March 2001. None was shown as respondent in the applications. The 2nd respondent however issued notices to respondents 4 to 7. Counters were filed opposing the cases. Several objections ranging from the very existence of the protected tenancy, to the relationship of the applicants with the alleged tenants were raised. The manner, in which the land is being enjoyed from time to time, and absence of any entries in favour of the so-called protected tenants or their legal heirs, was also pointed out. The 2nd respondent passed an order, dated 08.03.2001 recognizing as many as 34 persons including 13 applicants, as legal representatives of Baindla Balayya and Kadala Narsiga. An order directing re-delivery of possession of an extent of Ac. 5.26 guntas of land was also passed on 15.03.2004.

13. By the time the Tahsildar passed orders on the applications filed under Sections 32 and 40 of the Act, the land has been divided into plots and several persons not only purchased the plots but also constructed houses. Such persons formed an association as the 3rd respondent herein. The 3rd respondent filed appeal u/s 90 of the Act challenging the orders passed by the 2nd respondent under Sections 32 and 40 of the Act. The appeal was allowed through order, dated 15.11.2005 and the matter was remanded to the 2nd respondent for fresh consideration and disposal. That order was upheld by this Curt in C.R.P. No. 6864 of 2005.

14. The manner in which the 2nd respondent dealt with the matter after remand, is somewhat peculiar, if not interesting. While remanding the matter to the 2nd respondent, the 1st respondent made a reference to the observation of the Hon''ble Supreme Court in Ponnala Narsing Rao''s case (2 supra) about the delay in filing the applications and accrual of rights to third parties. He has also taken into account, the plea of the 3rd respondent that houses were constructed, roads were laid and electricity and drainage system were provided. The 2nd respondent was required to ascertain

(a) whether any protected tenancy certificates were issued in respect of the land in question;

(b) whether the applicants before him are the legal heirs of the deceased protected tenants;

(c) when the dispossession from the land has taken place; and

(d) whether any rights have accrued to third parties between the date of dispossession and date of filing of the application u/s 32 of the Act.

15. The order, dated 30.06.2008 passed by the 2nd respondent is silent on all these aspects. There is no reference to the proceedings through which the protected tenancy certificate was issued in favour of Baindla Balayya and Kadala Narsiga. Since that constitutes the foundation for the entire edifice of the proceedings, the record ought to have been verified and a finding ought to have

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/padala-pentaiah-appellant-hash-the-…

been recorded. Not only the order, dated 30.06.2008, but also the applications filed by the petitioner and his other relations are silent as to the date of death or the date of dispossession. The applications were as vague as they could be.

16. As observed earlier, the application u/s 40 of the Act was made by 13 persons including the petitioner. A specific plea was raised in the application that except those persons, there are no other individuals entitled for succession. However, the 2nd respondent passed an order in the first round of litigation on 08.03.2004 holding that 34 persons are the legal heirs. None of the 21 persons over and above the applicants, were issued notices, much less did they claim any rights. After remand, the 2nd respondent did not delve into that aspect and simply ordered the application as prayed for. The preamble of the order passed by the 2nd respondent reads:

This is a case filed U/s 90 of AP(TA) Tenancy and Agriculture Land Act, 1950 filed by the appellants. The case is also taken on the orders of the Hon''ble High Court in CRP No. 6864 of 2005, dt. 12th September, 2007 and also on the orders passed by the Joint Collector, R.R. District for denovo enquiry, dated 15.11.2005 in case No. F2/6157 of the 2004 U/s the 32 of Tenancy Act with regard to restoration of possession of the land bearing Sy. Nos. 177, 178, 179, 326, 327 & 328 respectively, situated at Anmagal Hayatnagar Village of Hayathnagar Mandal, R.R. District.

17. After referring to the respective contentions, the 2nd respondent passed the order as under:

ORDER:

Section 32 would manifest that the legislative initiations of the tenant shall continue to be in possession so long as he is not disturbed/dispossessed in accordance with the provisions of the Act. Any attempt may be made by the landlord to dispossess the tenant in occupation of land otherwise than in due process of law is prohibited. It is therefore implicit that the Tahsildar has the jurisdiction to restrain the landlord or any other person on his behalf to disposes or attempt to disposes the statutory tenant from continuing in possession of the land except in manner prescribed under the law.

In this instant case such legal attempt on the part of owner to disposes the protected tenant either by allowing of exercising first option by the protected tenant to purchase or surrender of rights are observed based on the records available in connection with the lands in question. u/s 90 read with 32(1) of the AP (TA) and in exercise jurisdiction of the Act, only two questions are to be answered in this case.

1. whether the protected tenant holder is entitled to restoration of possession over the property, which has urban character and constructions have taken place leaving some vacant spaces in between.

2. whether the protected tenants are entitled, for restoration of possession over

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/padala-pentaiah-appellant-hash-the-…

the property which is now part of the municipality and no signs/or possibility of agriculture over the land. And after due enquiry and since open spaces available as agricultural lands and keeping in view of the poor conditions of the tenants, who have been agitating over the rights of protected tenants for the last 20 years are legally eligible to be restored the land in to-to. The above questions are thus answered in favour of the petitioners accordingly.

3. that the open pockets of scheduled land which are vacant deserves to be restored to the Protected Tenants share through the same is of urban character in the spirit of the Act.

4. in the event of any agitation over the order, the respondents may prefer revision or appeal before the competent forum.

5. the only lacunae on the part of the Padmavathi Colony Welfare Association is over the constructions which have come up I the FTL area "Kummari Kunta" local tank. Hence, the provision of APTA Irrigation Act is invoked over the scheduled suit land.

Hence the claim of the petitioners is found deserved for the relief prayed for.

18. From this, it is evident that no finding was recorded as to the existence of protected tenancy certificate or date of death of the protected tenants or date of dispossession or the entitlement of the individuals brought on record as legal representatives. Though the order was passed covering applications under Sections 32 and 40 of the Act, not even a semblance of discussion was undertaken with reference to the application u/s 40 of the Act.

19. The basis for claiming the extraordinary rights conferred under the Act is the protected tenancy certificate. Not only a certificate is issued in the prescribed form but also the relevant entries are made in what is known as "PT Register". The petitioner did not file either the PT certificate or the extract of the PT Register. Therefore, the very basis was shaky.

20. Assuming that there was no serious dispute as to the existence of the protected tenancy in favour of the two persons referred to in the previous paragraphs, the facts pertaining to the death of the concerned protected tenant and his relation with the applicants ought to have been pleaded and established. Not even the date of the death of the protected tenants was mentioned, much less the death certificates were filed. There was any amount of uncertainty as to the number of legal heirs of each of the alleged protected tenants. It has already been mentioned that in the earlier round, the Tahsildar took the view that there are as many as 24 legal heirs to Baindla Balayya and 10 legal heirs to Kadala Narsiga. Out of them, only 13 applied and 21 were not even issued notices. After remand, the 2nd respondent did not care to verify these aspects and ordered the application as prayed for. Such an exercise is totally untenable. Added to that uncertainty and illegality, the petitioner alone is pursuing the proceedings, while rest of others have either become disinterested or have reconciled, to the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/padala-pentaiah-appellant-hash-the-…

findings recorded by the 1st respondent.

21. Section 40 of the Act can be said to be one of the most important facets of the entire legislation. Normally, the laws dealing with the legal regime in relation to property, define the rights of individuals and provide for the remedies to enforce them. If a person, who is otherwise entitled to the ownership of land or right to possession, is dispossessed, he has to institute the proceedings before a Court of Law, to recover possession. However, the Act empowers an Executive Wing of the State itself, to restore possession without the necessity for the protected tenants or their legal heirs, to institute proceedings before a Court of Law.

22. In Sada''s case (1 supra), a Full Bench of this Court interpreted Section 40 of the Act as being not guided by the Law of Limitation. The said principle holds good even now. The Hon''ble Supreme Court however examined a small facet of this aspect and held that if, between the date of dispossession from the property and filing of applications u/s 40 of the Act, any rights have accrued to third parties, the same needs to be taken onto account.

23. The attempt made by the learned counsel for the petitioner that the observation of the Supreme Court in Ponnala Narsing Rao''s case (2 supra) is only the obiter and not ratio is difficult to be accepted. Many a time the line of distinction between an obiter and ratio in a judgment rendered by a Court of record is too thin to be explained with an amount of confidence. This is particularly so, when the observation is of the highest Court of the Country. Article 141 of the Constitution of India mandates that the law laid down by the Supreme Court is binding on all the Courts within the Country.

24. In his treatise on ''Jurisprudence'' at page No. 143, Dias observed:

Rationes and dicta tend to shade into each other. The former have law-quality and are binding on lower courts; dicta, too, have law-quality, but are not binding at all. Vis-?-vis a higher court even the ratio decidendi of a lower court decision has only persuasive force like that of a dictum. It has been pointed out that some dicta are so authoritative that the distinction between ratio and dictum is reduced to vanishing point. Dicta, which have no force, arc propositions stated by way of illustration or on hypothetical facts. Grater difficulties attend rulings of law which are subsequently relegated to the status of dicta by interpretation. The distinction in such cases between ratio and dictum is but a device employed by subsequent courts for the adoption or rejection of doctrine expressed in previous cases according to the inclination of the judges.

25. Sir John Salmond explained the distinction between ratio decidendi and obiter dicta as under (see ''Salmond on Jurisprudence'', 12th Edition by P.J. Fitzgerald at Page No. 178):

The ratio decidendi, as opposed to obiter dicta, is the rule acted on by the court in the case. But since the common law practice is that courts should explain and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/padala-pentaiah-appellant-hash-the-…

justify their decisions, we normally find the rule which is applied actually stated in the judgment of the court. Later courts, however, are not content to be completely fettered by their predecessors, and wisely so, for the development of the common law has been an empirical one proceeding step by step. When a court first states a new rule it cannot have before it all possible situations which the rule as stated might cover, and there may well be situations to which it would be quite undesirable that it should apply. If such a situation should come before a later court, that court might well take the view that the original rule had been too widely stated and must be restricted in application. Or again the original court when stating a rule is neither concerned nor obliged to formulate all possible exceptions to it. Such exceptions must be dealt with as and when they arise, by later courts.....

26. Edgar Bodenheimer in his book ''Jurisprudence-The Philosophy and Method of the Law'' at page No. 437, has this to say on this aspect:

The correct view of the nature and scope of the ratio decidendi must proceed from the premise that it is neither the material facts of the case nor the rule of law as formulated by the court which form the authoritative element in a decision. The controlling question to be asked in determining the weight of a prior decision is whether the rationale of public policy underlying the first decision (which the first court tried to cast into the form of a proposition of law) is equally applicable in the second case. A later case involving facts similar to those present in an earlier case should, as a general rule, be decided in consonance with the earlier case where both cases fall under the principle of public policy or justice which lay at the bottom of the earlier decision....

...a case is not controlling as a precedent for the sole reason that similarities and parallels between the facts of the earlier and later cases can be discerned. The ratio decidendi must be discovered by relating the facts of the two cases to a principle of legal policy which reasonably covers both situations. In many instances, this principle of policy will not spring into existence as a finished creature the first time it is expressed by a court. It will often have been stated by the court in a tentative and groping fashion, and its true import and scope will not be escapable of being ascertained until other courts have had a chance to correct the inadequacies of the first formulation and to graft exceptions, qualifications, and caveats upon the principle. In this way the ratio decidendi of a case often develops its true and full meaning slowly and haltingly, and it may take a whole series of decisions involving variations of the situation presented in the first case until a full-blown rule of law, surrounded perhaps by a cluster of exceptions, replaces the tentatively and inequality formulated generalization found in the initial decision. In short, a whole course of decisions will gradually mark out the outer limits of a legal principle left indeterminate by the first decision attempting to give form to it.

27. From a perusal of the observations of the Jurists, extracted above, it is clear that one of the methods of distinguishing obiter from ratio is to see whether the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/padala-pentaiah-appellant-hash-the-…

observation was made by the Court with reference to the specific facts of the concerned case or in general terms.

28. Viewed in this context, the observation made by the Supreme Court in Ponnala Narsing Rao''s case (2 supra) cannot be said to be with reference to the facts of that case. If that were to be so, their lordships would have given a clear finding in the relevant issue and issued directions either way. The principle was laid to the effect that the accrual of the rights in favour of third parties, if any, must be taken into account and it was left open to the Courts to apply the principle depending on the facts of each case. Therefore, it is difficult to treat the observation of the Supreme Court in Ponnala Narsing Rao''s case (2 supra) as mere obiter.

29. There may not be much difficulty in granting the relief u/s 32 of the Act, when an application is filed by the protected tenant against the land holder. Where however, the applicant is not the protected tenant and he is yet to establish the basic facts, such as existence of protected tenancy and his relationship with the protected tenant and the person who is said to be in possession is not the land holder, the authority is required to be careful and cautious. The reason is that a specially framed legal regime cannot be applied in favour of or against who are not directly covered by it, unless proper link is established.

30. Reverting to the facts of the case, the petitioner did not even state whether it were the original protected tenants, that were dispossessed from the land or their legal heirs. In the application itself, it was mentioned that most of the property is covered by houses. The persons, who constructed the houses, are not impleded. It was not stated whether the land holder dispossessed them. It is only the 3rd respondent that came into picture later on and assailed the orders that were passed in the first round of litigation. The order passed by the 2nd respondent is blissfully silent about the date of dispossession and the accrual of rights. He ought to have examined these questions particularly when the 1st respondent made a specific reference to them.

31. Further, the subject matter of the Act, as its name indicates, is tenancy in agricultural lands. The emphasis is to ensure that the tenants in agricultural lands continue their activities, without any interruption from the owner or other persons claiming through them. The land in the instant case ceased to be agricultural land, several decades ago. It was divided into plots and houses were constructed. The petitioner, if at all has to be inducted into possession of various houses that arc constructed over the land. That is not at all the purport of the Act.

32. Added to that, a perusal of the order, dated 08.03.2001 discloses that the tenancy rights were said to be in respect of about Acs. 10.00 of land. Compromise was recorded in respect of half of it and rights were claimed regarding the balance. There is no clear demarcation. The 2nd respondent took

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/padala-pentaiah-appellant-hash-the-…

the view that the petitioner is one of the 10 legal heirs of Narsiga. His share was not indicated. Even now the petitioner is not able to assert his share. In this state of affairs, it is just impossible to recognize the rights of the petitioner. The 1st respondent has taken correct view of the matter and this Court is not inclined to interfere with the same.

33. Therefore, the writ petition is dismissed. The miscellaneous petitions filed in this writ petition also shall stand disposed of. There shall be no order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/padala-pentaiah-appellant-hash-the-…