

(1953) 04 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 180/5 of 1951-52

Polsetty Papayya

APPELLANT

Vs

Hon"ble Revenue Minister Yogi Raj

RESPONDENT

Date of Decision : 10-04-1953

Acts Referred:

Hyderabad Asami Shikmi Act — Section 24, 7

Hyderabad Tenancy and Agricultural Lands Act, 1950 — Section 103, 44

Citation : AIR 1953 AP 242

Hon'ble Judges : Mishra, C.J;Md. Siadat Ali Khan, J

Bench : Division Bench

Advocate : Gopalrao Ekbote and Bhimsenachari Asarat, for the Appellant; B.V. Subbarayudu and Sadashivrao, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a petition for a Writ of certorari. The Petitioner Polsetty Papayya prays that the judgment of the Revenue Minister date 5-10-1952 reversing the appellate decision of the Board of Revenue dated 24-11-1951 be quashed. The case was for ejectment of the Petitioner from certain tenancy lands. The view taken by the Board was that the notice issued by Yogiraj land lord-Respondent to the Petitioner on 5-6-1948 u/s 7, Asami Shikmis Act was not sufficient and a fresh notice should have been issued under the Tenancy Act. Yogiraj's notice referred to above stated that he would require the land for his own cultivation from the next cultivation year and it called upon the Petitioner to vacate the land.

On 9-6-1950, the Tahsildar forwarded the file to the Collector without passing any formal order in view of the circulars of the Revenue Department enjoining that no tenant who had a crop standing on the land should be dispossessed therefrom. He desired that the Collector should himself pass suitable orders. On 4-9-1950 the case was decided by the Collector. The tenant went up in appeal to the Board of Revenue and, as already stated, the landlord appealed to the Revenue Minister (as he then was) from the judgment of the Boards of Revenue.

On these facts the learned Advocate for the Petitioner, Shri Gopalrao Ekbote pointed out that the Tahsildar did not enquire and decide the case in accordance with the provisions of Section 24 of the Asami Shikmi Act and that he could not have decided before the year was over. Basing upon this the learned Counsel argued:

(i) . u/s 7 of the Act a notice of one year is required to determine the tenancy, that the notice given by the landlord to the tenant was dated 5-6-1949; that subsequently the respondent served another notice through the Tahsil on 22-9-1949 which was served on the tenant on 30-10-1949; that in this way the year was completed on 4-6-1950 or on 29-9-1950 if the dates of the issue of the notices are to be seen or on 29-10-1950 if the date of the serving of the notice were to be taken into consideration.

The Respondent it is said applied to the Tahsildar for the ejection of the Petitioner and the restoration of the possession of the land in dispute to himself before the close of the year on 16-5-1950; that this was a clear contravention of the provisions of Section 24 referred to above, for the right to eject the tenant arises only after the termination of a year from the date of notice; that not-only the petition was filed much before the passing of the 12 months but the Tahsildar took action on it and in contravention of the provision of" Sub-Sections 2, 3 and 4 of Section 24 of the Asami Shikmi Act, forwarded the file to the Collector without making an enquiry or passing an order; that the Tahsildar was bound to enquire and pass an order; that the Collector had only an appellate jurisdiction and that subject to the orders passed by him in appeal the Act gave finality to the order of the Tahsildar. It is urged that since the Collector had no right to decide the case as a court of first instance there was a clear violation of the provisions of the statutes from the very beginning.

(ii) The next contention of the learned Advocate was that as the application was under the Asami Shikmi Act there was only one appeal allowed to the Collector and possibly a revision petition to the Board of Revenue; but as the Tahsildar did not pass any order, an appeal was filed from the order of the Collector to the Board of Revenue and a second appeal to the Revenue Minister; that this was in contravention of Section 24 of the Asami Shikmi Act; and that when the Revenue Minister was of the opinion that the old Asami Shikmi Act applied to the case he should have also held that he had no jurisdiction to hear the second appeal and should not have heard it. It is urged that the impugned decision dated 5-10-1951 was therefore without jurisdiction and a "writ of "certiorari" should be issued to quash it.

(iii) The third line of argument adopted by the learned Advocate on the basis of Section 24 of the Asami Shikmi Act was that since the right of the landlord to eject the tenant could mature only after the lapse of the year from the date of notice and the appeal of the Asami Shikmi Act by the Hyderabad Tenancy Act would have saved an accrued right only if a year had elapsed when the repealing Act came into force and since the year had not elapsed when the landlord applied

or when the Tahsildar forwarded the file to the Collector, there was no accrued right and the repeal could not operate to save such a right. It was therefore said that the notice issued under the Asami Shikmi Act was of no effect. According to the learned Counsel there should have been a fresh notice u/s 44 of the Asami Shikmi Act. In this connection, the learned Advocate emphasised also the words "giving notice" in Section 7 of the Asami Shikmi Act which he says means that the tenant should be informed of the landlord's intention to eject in the sense that the information should reach him one year before the accrual of the right. It is urged that as there is nothing to show that the tenant was served before 30th October 1949 the order of the Tahsildar and of the Collector was "ultra vires" and could not be saved.

2. We have carefully considered the above arguments of the learned Advocate. It is evident that the Hyderabad Tenancy Act 1950 passed on 10th June 1950 saves all acts done and all rights accrued before the promulgation of the Act under the Asami Shikmi Act which it repeals. The question therefore, is whether the giving of notice by the Respondent landlord was not an act done in exercise of an accrued right and thus saved by the repeal. The Board of Revenue took the view that a fresh notice was required u/s 44 of the new. Tenancy Act on the ground that Section 44 enacts that "a notice should be issued after the commencement of the Act". The Revenue Minister (as he then was) took the view that the words "that the notice should be issued after the commencement of the Act", apply to such proceedings as are instituted after the promulgation of the Tenancy Act and have nothing to do with acts done under the Asami Shikmi Act and, consequently, nothing to do with a notice issued under the old Act. The reasoning of the Revenue Minister appears to be correct, for there can be no denial that the issue of the notice was an act done under the Asami Shikmi Act and it is saved by Section 103, Hyderabad Tenancy Act.

The reasoning of the learned Advocate that a right of ejectment does not accrue before the lapse of the year appears to be fallacious. The issue of the notice has nothing to do with the accrual of the right. The right to eject the tenant in certain circumstances is a right of the landlord based on his ownership and the lease. Its exercise only was limited by certain conditions one of which was the passing of a year. In our opinion, there was no infringement of this condition even when the Tahsildar forwarded the file to the Collector, as he forwarded it on 9-6-1950, and the year of the notice was completed on 4-6-1950. Again, looking at the matter from another point of view, there was in fact no breach of the condition as no orders to eject the tenant were passed before the year was over since the Collector passed them for the first time on 4-9-1950. There is no prohibition to apply before the passing of the year so that the ejectment takes place after the year is over. Hence, the first argument of the learned Advocate that the Tahsildar had no jurisdiction to entertain the application before the year was cut is incorrect.

Regarding the second contention, it should be noted that on the promulgation of

the new Act, the landlord applied that his petition should be deemed to be under the new Act and the tenant did not object. In fact, it was the tenant himself who went to the Board of Revenue in appeal from the order of the Collector. In these circumstances, it cannot be denied that the proceedings were under the new Tenancy Act, and the second appeal to the Revenue Minister was fully competent. The contention of the learned Advocate on this point also is therefore, incorrect. There remains the contention that giving notice means also that the notice is served. The record shows that the Petitioner purposely avoided taking notice, and even apart from this the words "giving notice" obviously would be referable to an act of the landlord and not to its receipt by the tenant. If the landlord acts as an ordinary prudent man would act in giving notice that should suffice. We are clearly of the opinion that there was no defect in the issue of the notice and, also that the forwarding of the file by the Tahsildar to the Collector on 9-6-1950 was after the lapse of one year from the date of notice.

We have already stated that, even if it had been before the year, as the ejection was not taking place within the year, the condition of a year's notice was not in any way contravened. A careful perusal of the order of the Tahsildar will show that he has clearly expressed an opinion that the tenant should be evicted not only because he had sublet without authority but also because he had spoiled the land by cutting the trees and digging pits and, if the Tahsildar did not pass any formal order it was because of the circulars that no tenant should be evicted who has a crop standing. The order of the Tahsildar, therefore, means that he came to the conclusion that the tenant should be evicted but desisted from enforcing it because of the circulars. The contention that there was no enquiry is incorrect; for the Tahsildar inspected the farms in the presence of the landlord. The tenant absented himself. Incidentally, the Petitioner, it would seem, is not a tenant but only a rent-racketing landlord, as after sub-letting without authority he stays in Secunderabad. At the inspection, the sub-tenants presented themselves presumably on behalf of Polsetty Papiiah. We think that the Tahsildar's conclusions and the decision of the Revenue Minister are not open to any valid objection.

3. Parties have had substantial justice. The petition has no substance. We dismiss it with costs of the landlord Respondent which we assess at Rs, 50/-