

(1964) 09 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 126 of 1962

Puvvada Changayya

APPELLANT

Vs

Sub Collector, Ongole and Others

RESPONDENT

Date of Decision : 30-09-1964

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 10(2), 11, 13, 19(2)
Andhra Tenancy Rules, 1957 — Rule 14
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 106, 144

Citation : AIR 1966 AP 4

Hon'ble Judges : Jaganmohan Reddy, J;Anantanarayana Ayyar, J

Bench : Division Bench

Advocate : P.M. Gopal Rao, for the Appellant; M.B. Rama Sarma and S.R. Reddy, for 3rd Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Gopal Rao Ekbote, J.—The short question involved is as to what is the meaning of the expression used in Section 11 of the Andhra Tenancy Act (XVIII of 1956) "during the currency of lease", whether that expression is confined to the original contracted lease or it also covers the extension in the lease effected by virtue of Section 10(2) of the said Act. While Umamaheswaram, J. held in *Thammiraju v. Pentiah*, (1960) 1 Andh WR 75 that that expression would be limited to the period for which the parties have entered into a contract and does not extend to the period mentioned in Section 10(2) of the Act, *Satyanarayana Raju. J.* observed in *Subbaraju v. Dandiganapndy Dharma Cheruyu*, (1961) 2 Andh WR 144 at p. 147 that "Section 11 has to be lead along with the terms of Section 10(2). The object of Section 11 is to protect the tenant in the event of a change of ownership during the currency of a lease. Notwithstanding the transfer of ownership, the tenant is entitled to the benefit conferred by Section 10". I therefore, think it advisable to refer this matter to a Bench for the determination of this conflict. My attention was drawn by Mr. Rama Sauna to the tact that as against the judgment of Umamaheswaram, J. in (1060) 1 Andh WB 75 a writ

appeal was filed but was not admitted by the Bench. It cannot however be said that the writ appeal was not admitted concurring with the view held by Umamaheswaram, J. while interpreting Sections 10 and 11 of the Act. No express decision on that point of a Bench of this Court is brought to my notice. This is an important matter which affects large number of tenant and deserves consideration by a Bench of this Court. The papers may be placed before the Hon'ble the Chief Justice for necessary orders.

Jaganmohan Reddy, J.

This petition has been referred to us by our learned Brother, Gopal Rao Ekbole, J., having regard to the conflict of decisions in *Thammiraju v. Pentiah*, (1960) 1 Andh WR 75 decided by Umamaheswaram, J., and *Subbaraju v. Dandiganapudy Dharma Cheruvu*, (1961) 2 Andh WB 144. In the former case Umamaheswaram J., held that the expression "during the currency of a lease" used in Section 11 of the Andhra Tenancy Act (XVIII of 1956) is confined only to the original contracted lease period, while in the latter case, our learned brother, Satyanarayana Raju, J. held that Section 11 has to be read along with the terms of Section 10(2); that the object of Section 11 is to protect the tenant in the event of change of ownership during the currency of lease and that notwithstanding the transfer of ownership, the tenant is entitled to the benefit conferred by Section 10.

2. Before we deal with this question a preliminary objection raised by the learned counsel for the respondent has to be disposed of. That is, as the petitioner is no longer in possession of the land and since there is no power under the Act to restore possession, this writ petition has become infructuous. Sri Gopal Rao, on the other hand, contends that while it is so, this Court can and should pronounce upon the validity of the want of jurisdiction of the Tribunals below to entertain the application of the landlord respondent.

3. It may be stated that the Tahsildar, on a petition from the respondent had directed eviction of the petitioner. Against that order, the petitioner went in appeal and obtained stay. The Revenue Divisional Officer agreeing with the Tahsildar dismissed the appeal, holding that the words "during the currency of a lease" included the period extended by the statute. This writ petition was filed to quash those orders of eviction. A stay was granted conditional on the payment of Rs. 500 by our learned brother Basi Reddy, J. But notwithstanding this conditional order, the amount was not paid and later, Seshachulupali, J. vacated the stay for non-compliance with the orders of Basi Reddy, J.

4. The contention of the learned advocate, Sri Gopal Rao is that before this stay was vacated by Seshachulupali, J. the petitioner was evicted and therefore the petitioner did not pay the amount. On the other hand Sri M. B. Rama Sarma, submits that for whatever reason it may be, the fact remains that the petitioner is no longer in possession and the question of setting aside the order of eviction does not arise, because the only purpose of quashing that order as illegal is to

maintain his possession. He contends that had the Act empowered the revenue authorities" to restore possession to tenants who have been dispossessed or were out of possession, it could have been urged that as a result of a decision in his favour quashing the order of eviction he would have been restored on his application; but having regard to what has been held by a decision of a Bench of this High Court in *Daleppa v Ramulu*, (1964) Andh WR 52 consisting of the Hon"ble the Chief Justice and Narasimham, j., there is no such power. In the aforesaid case it was argued that Section 16 empowered the revenue authorities to restore possession. Similarly Rule 3(6)(c) was also referred to. But the Bench after an exhaustive review of the provisions of law and comparing those with Section 32 of the Hyderabad Tenancy and Agricultural Lands Act (Act XXI of 1950) and Section 5 of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, held that no power had been conferred upon the revenue authorities to restore possession to a tenant who was, out of possession. It was observed at p. 56 thus:

"In the present case the status of the 1st respondent as a cultivating tenant had come to an end more than a month before the application has been filed by him. In other words, the relationship of landlord and cultivating tenant had ceased to exist. What the 1st respondent sought in this case was the revival of his status as a cultivating tenant. In our opinion such an application is not cognizable under this Section, which postulates the existence of a relationship of a landlord and cultivating tenant and provides for the exclusive jurisdiction of the Tahsildar to adjudicate upon certain disputes mentioned in the various Sections of the Act already alluded to by us. In a situation like this, if the Legislature wanted that a person who was once a cultivating tenant should be reinstated by reason of his having been dispossessed, an appropriate provision would have been made in the Act. In the absence of such a provision, a person who was a cultivating tenant and who feels aggrieved by the action of the landlord can avail himself of the remedies available to him under the ordinary law, such as Section 145 of Cr. P. C. but it is not open to him to have recourse to Section 16 of the Act."

5. Sri Gopal Rao however contends that those observations do not apply to the facts of this case and that by virtue of Section 19(2)(c) read with Section 14(1) those provisions of the CPC relating to restoration of possession will be applicable and that rules can be made regulating the execution or enforcement of the orders or decisions passed under the Act and as such when rules made the provisions to the CPC applicable, it must be deemed that those rules relating to restoration, viz., Section 144 C. P. C., or Section 145 Cr. P. C., or Order XXI, Rule 106 C. P. C., were made to apply. In our view, the judgment of the Bench is clearly distinguishable inasmuch as that was a case where a cultivating tenant had already ceased to be a cultivating tenant a month before the application was filed by him. It was assumed that he was not a cultivating tenant at the time when he made the application and consequently it was held that there was no provision under which the Tahsildar could entertain that application. Such a provision did exist in the Hyderabad Tenancy and Agricultural Lands Act, 1950,

but is wanting in the Andhra Tenancy Act.

6. It is however clear that we are now called upon to determine quite different proposition. The question is whether, during the proceedings which have been validly commenced under the Act, a cultivating tenant, who is evicted by a process issued under its provision, can be restored if the order under which he has been directed to be evicted and in fact evicted, is set aside by an appellate court or by a superior Court having jurisdiction to consider the validity of such orders. It is strenuously contended that the only way in which a cultivating tenant can maintain his possession is by obtaining orders of stay or injunction as provided for under 5 (10) and Rule 15 of the Andhra Tenancy Rules 1957. If he has not been diligent enough to obtain orders and has been dispossessed in execution of the orders pending appeal, he could have no remedy. We refuse to accept that that is the contingency that is contemplated under the Act. If pending appeal to the Revenue Divisional Officer u/s 16(2) against the order of the Tahsildar the tenant is evicted by the Tahsildar in execution of his order, can it be said that the appellate Court has no power to direct restoration if the order of the Tahsildar is reversed? Sri M. B. Rama Sarma was unable to answer this question, but was merely content to say that it is the duty of the tenant to immediately rush to the appellate Court and obtain stay; and alternatively, he contends that there is a rule on which he is unable to lay his hand and which says that during the period of the appeal no eviction can take place which would show it is the duty of the tenant to maintain himself in possession by obtaining appropriate orders, failing which he cannot be restored to possession if he has been evicted in compliance with the orders of the Revenue authorities. Whether or not, such an inference would follow since no such rule has been brought to our notice we are unable to consider it. But it appears to us that where certain actions are taken as a consequence of orders passed which are subject to appeal or which are liable to be quashed, the very object of reversing or setting aside those orders is to restore the parties to the status quo ante which existed at the time when the proceedings commenced. This general principle is also supported by the provisions of the Act. Section 19 empowers the Government to make rules and Sub-section (2) enacts that in particular and without prejudice to the generality of the power under Sub-section (1) such rules may, among others, provide for the execution or enforcement of orders or decisions passed under the Act. Accordingly under Rule 14(1) all proceedings before Tahsildar or Revenue Divisional Officer under the Act are to be governed as far as may be, by the provisions of the Code of Civil Procedure. In other words, those provisions of the CPC which relate to execution or enforcement of orders or decisions passed under the Act would be applicable because those are within the ambit of the power u/s 19(2). It may be observed that Order 21 C. P. C. deals with execution of decrees and orders. So much of these rules which pertain to the execution apply to the proceedings before the revenue authorities. Section 47 C. P. C. deals with the question to be determined by the Court executing decrees and Section 14 C. P. C. which is concerned with rules for restitution and is couched in similar

language to that of Order 21, Rule 106 C. P. C. In our view there is a power which inheres in every Court to grant restitution whenever Justice of the case demands, because no Court would be allowed to work injury on the suitors where that Court's order which granted a relief to a person has been varied or reversed. In so far as Section 144 C. P. C. is concerned, there has been a conflict of opinion namely whether a proceeding under this Section is a proceeding in execution. While the High Courts of Madras, Bombay, Patna and Chief Court of Oudh held that restitution u/s 144 C. P. C.. which was similar to Section 583 of the Code of 1882, was by way of execution, the other High Courts like Allahabad, Calcutta, Nagpur etc., thought it was not. In our view, the above provisions of the CPC both u/s 144 and under Order XXI C. P. C. are available to the Tahsildar and the Revenue Divisional Officer by virtue of Section 19(2) read with Rule 14 and if the order passed by them is varied or rescinded, the status quo ante of the petitioner can be restored. In this view, the preliminary objection has no substance and is overruled.

7. Now coming to the substantial question in this petition, what we have to consider is whether the words "during the currency of a lease" employed in Section 11 and Section 13 refer to the period agreed to between the parties or to the extended period of the lease u/s 10(2). Umamaheswaram, J. in (1960) 1 Andh WR 75 had occasion to consider this question. In that case, a lease entered into between the landlord and the tenant had expired on the 1st of April 1957. Evidently, it was a lease for three years and the tenant claimed that he was entitled to continue in possession till the 1st June, 1959. On a consideration of the terms of Section 11 of the Act, both the Deputy Tahsildar, Pithapuram and the Revenue Divisional Officer, Peddapuram held that the tenant was liable to be evicted. The learned Judge observed thus:

"The object of Section 11 appears to be to protect genuine transfers effected during the currency of the lease and when such transfers are effected, the tenants are not entitled to contend that they are entitled to the benefit conferred by Section 10(2) and continue in possession up to 1st June, 1959. If Shri Kondapis contention is correct, the terms of Section 11 would have been different. Section 11 clearly uses the words "during the currency of a lease" and does not contain the words "or upto or before 1st June, 1959". In the circumstances, I find it difficult to accept the contention of the learned Advocate for the petitioner."

8. In order to appreciate the contentions addressed before us it is necessary to examine the provisions of Sections. 10, 11, 12, 13 and 14 of the Act in so far as they are relevant. They are accordingly extracted below:

"10(1). The minimum period of every lease entered into between a landlord and his cultivating tenant on or after the commencement of this Act, shall be six years. Every such lease shall be in writing and shall specify the holding, its extent and the rent payable therefor, with such other particulars as may be prescribed. The stamp and registration charges for every such lease shall be

borne by the landlord and the cultivating tenant in equal shares.

(2) Notwithstanding anything contained in Sub-section (1), all tenancies subsisting on the date of the promulgation of the Andhra Cultivating Tenants' Protection Ordinance, 1956 (Andhra Ordinance I of 1956), and protected by that Ordinance, and all subsequent tenancy agreements entered into upto the commencement of this Act, shall continue for a period of five years from the 1st June 1956 or until the expiry of the lease in the normal course, whichever is later, on the same terms and conditions as before, but subject to the determination of fair rent in case of dispute.

(3) After such termination, the landlord may resume the land from the cultivating tenant without any notice, and if the tenant does not surrender possession, the landlord may by an application before the Tahsildar obtain an order for delivery of possession in the prescribed manner.

11. In the event of a change in the ownership of any land during the currency of a lease, the cultivating tenant shall be entitled to continue the tenancy on the same terms and conditions as before, for the unexpired portion of the lease:

Provided that in the case of a land held by cultivating tenant under a Receiver appointed by a Court, the tenancy shall terminate on the expiry of the agricultural year in which the land ceased to be under the management of such Receiver.

12. If a cultivating tenant dies, his widow and his lineal heirs shall have the option to continue the tenancy for the unexpired portion of the lease on the same terms and conditions on which the deceased cultivating tenant was holding; and such option shall be exercised by serving a notice in writing on the landlord within a period of three months from the date of demise of such cultivating tenant.

13. Notwithstanding anything contained in Sections. 10, 11 and 12 no landlord shall be entitled to terminate the tenancy and evict his cultivating tenant during the currency of a lease except by an application made in that behalf to the Tahsildar and unless such cultivating tenant ---

(a) has failed to pay the rent due by him within a period of one month from the date stipulated in the lease deed, or in the absence of such stipulation, within a period of one month from the date on which the rent is due according to the usage of the locality; and in case the rent is payable in the form of a share in the produce, has failed to deliver the produce at the time of harvest: or

. . .

14(1). A cultivating tenant may terminate the tenancy and surrender his holding at the end of any agricultural year during the currency of a lease by giving not less than three months notice in writing expiring with the end of such year to the landlord.

(2).. No tenant shall surrender a part of his holding only."

9. A perusal of the above provisions shows that Sub-section (1) of Section 10 regulates the minimum period of every lease entered into between a landlord and a cultivating tenant on or after the commencement of the Act to be six years, while Sub-section (2) deals with tenancies subsisting on the date of the promulgation of the Andhra Cultivating Tenants Protection Ordinance, 1956 (Andhra Ordinance I of 1956) and protected by the Ordinance. All subsequent tenancy agreements entered into up to the commencement of the Act are to continue for a period of five years from the 1st June 1956 or until the expiry of the lease in the normal course, whichever is later, on the same terms and conditions as before, but subject to the determination of fair rent in case of dispute. We are here concerned with Sub-section (2) because the Ordinance was promulgated on 10-7-1956. The tenancy which was entered into between the landlord and the cultivating tenant was on 29-3-1956 so that it was a subsisting tenancy on the date of the promulgation of the Ordinance. This being so, the period of the lease would terminate on the 31st of May 1961. It may be stated that thereafter the Legislature has been extending the period by yearly enactments and the possession of the cultivating tenants continued till 31st May 1965. As we have already stated, the third respondent purchased the land from the landlord on 7-1-1961 even before the normal period of lease agreed to between the parties had not expired. The contention of the learned Advocate for the third respondent is that Section 11 was conceived for the benefit of the purchasers and consequently the Legislature intended to protect them by terminating the lease by conferring on them a right to possession at the expiration of the original period of lease and not the extended period of lease. This contention, in our view, is clearly unwarranted. Such an intention cannot be imputed to a Legislature which was seeking by the Legislation to confer benefits and rights upon tenants and to create a security of tenure so that they may be encouraged to till and cultivate the land and benefit not only themselves but the country at large. The preamble to this Section itself gives a key to that intention while the other provisions of the Act also furnish A clear indication of what the Legislature intended. The Preamble states

"where as it is expedient to provide for the payment of rent by cultivating tenants and for fixing the minimum period of agricultural leases in the Andhra area of the State of Andhra Pradesh".

In Section 10 itself all new leases to be entered into from the date of Ordinance are to be for a period of six years and Sub-section (2) notionally extends the period, beyond the period agreed to between the parties, by five years from a particular date. It also provides that, if the period of five years expired earlier than the period fixed by the parties, then the lease is deemed to be terminated at the end of the period fixed by the parties. There can be no more indication of what the Legislature intended than this provision which gives the longer period, whichever that period may be, whether it be fixed by statute or by agreement.

Apart from that, Sub-section (2) of Section 10 refers to the termination of the period of lease fixed between the parties in the agreement or deed of lease as the expiry of the lease in the normal course while in Section 11 the words used are "during the currency of a lease". In our view, the contrast in the terminology used by the Draughtsman indicates clearly what was intended by the use of the words "during the currency of a lease". Section 10 fixes the minimum period of lease. That is what the marginal note also says, so that the period of lease, in so far as that Section is concerned, is the minimum period fixed u/s 10 or by agreement whichever is longer. If this is so -- indeed we are of the view that it is--then the phrase "during the currency of a lease" means and implies that which is contemplated u/s 10(2). Both Section 10(2) and Section 11 should be read together. The words "currency of a lease" merely mean the subsistence of the lease. There is no indication in that Section that the subsistence of the lease is only confined to the term as agreed to between the parties. In *Rajah of Venkatagiri v. State of Andhra Pradesh*, AIR 1960 SC 32 their Lordships of the Supreme Court, while referring to the rule which provided that a mining lease granted by a private person shall be subject to certain conditions therein specified, one of which was that the term of the lease should be renewed at the option of the lessee for a period not exceeding the duration of the original lease, observed at p. 37

"the effect of this rule is, as it were, to insert statutorily some new terms in the lease itself".

The statutory term is as much a term of the lease as the terms agreed to between the parties, if this were not so, then it would be difficult to construe Section 13 in a reasonable manner, for if we accept the contention of the learned Advocate for the third respondent it would mean that a landlord who has not sold his land can make an application to the Tahsildar to evict the tenant after the expiry of the period agreed to between them under the lease deed even though u/s 10(2) that period of lease has been extended. Such could not be the intention of the Legislature. In our view the only rational, logical and proper interpretation of the words "during the currency of a lease" used in Sections 11 and 13 is that they are referable to the period specified in Section 10(2). Our learned brother Satyanarayana Raju, J. in (1961) 2 Andh WR 144 while considering the question that a lease for one year entered into after the promulgation of the Ordinance instead of for six years required under it was not illegal and contrary to public policy also considered the effect of Section 11. But the learned advocate for the third respondent contends that any such observations on this aspect of the matter must be deemed to be obiter inasmuch as the learned Judge had disposed of the case on the first point itself. While it is true that at p. 147 there is an observation that a lease for one year contrary to the terms of Section 10(1) is not a void transaction and that would be sufficient to dispose of the case, our learned brother thought it necessary to notice the argument advanced by the learned counsel for the respondent, namely, that the transaction in question is saved by the proviso to Section 11 of the Act. In this

context, it was observed:

"Section 11 has to be read along with the terms of Section 10(2). The object of Section 11 is to protect the tenant in the event of a change of ownership during the currency of a lease. Notwithstanding the transfer of ownership, the tenant is entitled to the benefit conferred by Section 10". These observations accord with our own view and we respectfully agree with them, There can be no question of the Legislature wanting to protect a bona fide purchaser and thereby conferring a greater benefit to him than to the land lord from whom he had purchased. It could never have been the intention of the Legislature to insure the purchaser against the effect of legislation and to give a better treatment to the purchaser than to the landlord. If this contention was accepted, the legislature would be deemed to stultify the object and purpose of the Act in as much as it will no longer be a legislation to fix the minimum period under agricultural leases. Similarly if the cultivating tenant dies also his legal representatives would be in a much more disadvantageous position u/s 12 than the tenant. The interpretation sought to be placed is neither rational nor logical nor is it in accord with the intent or policy of the Legislature. In this view of the matter, the writ petition is allowed with costs. The orders of the Revenue Divisional Officer and the Tahsildar are quashed and the application of the 3rd respondent to the Tahsildar is dismissed as it is not entertainable. Advocate's fee Rupees 100/-.