

(2012) 09 AP CK 0027

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1520 of 2012

Ramulu and Others

APPELLANT

Vs

Smt. Sumitra Bai (died) and Others

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 38B, 38E, 38E(2), 90

Citation : (2013) 1 ALD 215 : (2013) 3 ALT 614

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : V.H.V.R.R. Swamy, for the Appellant; P. Laxma Reddy, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy

1. This Civil Revision Petition is third in succession in respect of a dispute between the same parties. One Mr. Basaiah, who is the father of petitioner Nos. 1 to 4, was the protected tenant in respect of Acs.3.29 guntas of land in Survey No. 121 situated at Madharam Village of Pargi Mandal. After his demise, ownership certificate u/s 38E of the Andhra Pradesh (Telangana Area) Tenancy & Agricultural Lands Act, 1950 (for short "the Act") was granted to the petitioners herein who claimed through the said Basaiah by the Mandal Revenue Officer, Pargi. The petitioners approached the Mandal Revenue Officer, Pargi for putting them in possession in respect of the said land. By order dated 15.05.1987, the Mandal Revenue Officer has directed the petitioners to be in possession. This order was questioned by the respondents, who are the original land owners, in an appeal filed u/s 90 of the Act before the learned Joint Collector, Ranga Reddy District. The said appeal was allowed by order dated 05.05.1990 mainly relying upon the alleged surrender of tenancy rights by the father of petitioner Nos. 1 to 4 orally prior to 1953. The petitioners filed C.R.P. No. 2024 of 1990 before this

Court questioning the said order. The said C.R.P. was allowed by order dated 26.06.1995 and the case was remanded to the learned Joint Collector with a direction to him to consider the case of the petitioners that the tenancy rights were not surrendered by Basaiah. After remand, the learned Joint Collector dismissed the appeal by order dated 23.10.2000. Feeling aggrieved by the said order, the respondents have filed C.R.P. No. 5756 of 2000. The said C.R.P. was allowed by this Court by order dated 18.03.2010 and the case was again remanded to the learned Joint Collector on the ground that while disposing of the appeal, he has not dealt with the question on which the case was remanded by this Court while disposing of C.R.P. No. 2024 of 1990. After remand, the learned Joint Collector has passed order dated 07.03.2012 where under the petitioners were relegated to the civil Court by filing a suit for recovery of possession. Feeling aggrieved thereby, the petitioners filed the present civil revision petition.

2. I have heard Mr. V.H.V.R.R. Swamy, learned counsel for the petitioners, and Mr. P. Laxma Reddy, learned counsel for the respondents.

3. The fact, which is undisputed, is that the petitioners were given ownership certificate u/s 38E of the Act in recognition of the protected tenancy rights of their predecessor in title, namely, Basaiah. The order dated 05.05.1990 of the learned Joint Collector allowing the appeal filed by the respondents proceeded on the premise that the tenancy rights were surrendered by the father of petitioner Nos. 1 to 4 and that the same was accepted by some of the petitioners herein who were defendant Nos. 2 to 6 in the written statement in O.S. No. 16 of 1978 on the file of the learned District Munsiff, Pargi filed by the original land owner Manik Prabhu. In C.R.P. No. 2024 of 1990, this Court has observed that the pleading in the written statement relating to the purported surrender was not of the petitioners but of somebody else. In the light of this submission, this Court has directed the learned Joint Collector to re-examine this aspect and, accordingly, remanded the case. After remand, the learned Joint Collector has dismissed the appeal filed by the respondents. The plea raised by the respondents regarding the oral surrender was dealt with by the learned Joint Collector in his order dated 07.03.2012 as under:

In this regard, as per the written statement the tenancy rights were surrendered in the year 1953 itself. The respondents contend that their predecessor-in-title never surrendered their protected tenancy rights and another written statement was filed in the suit. But, the parties not produced any relevant documents as per their contention.

4. As noted above, the respondents filed C.R.P. No. 5756 of 2000 against the said order dated 23.10.2000 of the learned Joint Collector. This Court has disposed of the said C.R.P. and opined that while considering the appeal, the learned Joint Collector has proceeded entirely on a different ground without advertng to the aspect relating to the surrender of tenancy rights pleaded by the respondents, as directed by this Court in C.R.P. No. 2024 of 1990. After remand, while disposing of the appeal, the learned Joint Collector observed that as per

the written statement filed in O.S. No. 16 of 1978, the surrender of tenancy rights was accepted and that the petitioners failed to file any written statement in which such surrender was denied. However, the learned Joint Collector has left the option open to the petitioners to file a suit for recovery of possession, as, since they have become the owners consequent on obtaining Section 38E certificate, their remedy lies in filing a civil suit for recovery of possession.

5. At the hearing, the learned counsel for the petitioner placed before the Court a photo copy of certified copy of the written statement filed by the petitioners herein in O.S. No. 16 of 1978. It is inter alia averred in the said written statement that the ownership certificate was already issued u/s 38B (Sic.E). In paragraph 4, it is inter alia averred as under:

That as regards the para 3 of the plaint it is submitted that it is a fact that the defendant No. 1 and the father of the defendant No. 2 to 6 were joint protected tenants over the suit land and the other allegations and statement made there in the para are incorrect and so denied. It is false to say that the defendant No. 1 and the father of the defendant No. 2 to 6 surrendered their rights of tenancy and left the suit land in favour of the plaintiff's father in 1953 and it is also equally false to say that since the plaintiff's father and after his death in the year 1960 the plaintiff personally cultivated the suit land and that he (plaintiff) is cultivating the suit land. It is false to say that Basaiah and Shantappa never cultivated the suit land after the year 1953 and their right of tenancy is ceased and that defendants never claimed any tenancy rights. The fact is that the defendant No. 1 is colluded with the plaintiff to put the defendant No. 2 to 6 into loss and deprive these defendants from the suit land. The plaintiff is indebted to the defendant No. 1. Apart from the above the defendant No. 1 is in inimical terms with the defendant No. 2 to 6 as he has filed another suit vide O.S. No. 25 of 1978 against these defendant No. 2 to 6 on the file of this Hon"ble Court which is pending. These defendants are vehemently contending the above suit and so he bore grudge against them.

(Emphasis added)

6. The underlined part of the extract of the written statement is added in manuscript as obviously they were omitted while preparing the certified copy by the staff of the lower Court. If we omit this part, there may be a scope for contending that defendant Nos. 2 to 6 admitted surrender of protected tenancy rights by their father. But if we exclude this part, the sentence would be incohesive and would not convey proper meaning. I am, therefore, fully convinced that the emphasized portion in the above extracted part of the written statement was initially omitted by inadvertence and is very much part of the written statement.

7. Thus, in paragraph 4 of the written statement, defendant Nos. 2 to 6 have denied in unequivocal terms the alleged surrender. Obviously, defendant No. 1, who filed a separate written statement, has accepted the plaintiff's plea of oral

surrender of the tenancy rights. It is significant to note that in paragraph 4 of the written statement, the petitioners herein have alleged collusion between defendant No. 1 and the plaintiff in order to cause loss to their interests by depriving them of the land. In paragraph 5 of the written statement, the petitioners asserted their right and possession over the land in respect of which Section 38E certificate was issued. Unfortunately, a copy of this written statement did not appear to have been produced before the learned Joint Collector. In ordinary course, this Court would have remanded the case to the learned Joint Collector. But, considering the fact that this case was remanded twice earlier and the dispute is pending for the last 25 years, I refrain from doing so.

8. Even otherwise, on the facts of this case, the alleged surrender of tenancy rights by the petitioners' father has no relevance. Once a ownership certificate is issued u/s 38E of the Act, the plea of alleged oral surrender of tenancy rights would have been relevant, only if an appeal was filed against the order granting ownership certificate u/s 38E of the Act, as rightly observed by the learned Joint Collector in his order dated 23.10.2000. It is not the pleaded case of the respondents that either they or their predecessors have filed any appeal against the order granting ownership certificate u/s 38E of the Act in favour of the petitioners. As on the date the ownership certificate is in force in favour of the petitioners. In this view of the matter, the observations of the learned Joint Collector in the impugned order that the petitioners have not produced any relevant documents to support their plea of non-surrender of protected tenancy rights are of no consequence as there can be no dispute over the petitioners' right of ownership over Ac.1.34 1/2 guntas.

9. The only other question, which requires to be considered, is whether the petitioners are entitled to recovery of possession. The learned counsel for the petitioners placed reliance on the proviso to Section 38E(2) of the Act which reads as under:

Provided that where the land, the ownership of which has been transferred to the protected tenant under sub-section (1), is in the occupation of a person other than the protected tenant or holder of the certificate issued under this sub-section, it shall be lawful for the Tahsildar to restore the possession of the said land to the protected tenant or holder of the certificate, after giving notice of eviction to the occupant thereof, in the prescribed manner.

10. The learned counsel for the respondents relied on a Division Bench Judgment of this Court in Chinnaboini Narsaiah and others Vs. The Tahsildar, Mahabubabad, Warangal District and others 1978 (1) ALT 508, and submitted that when once the ownership rights are conferred on a protected tenant, the Tahsildar cannot order restoration of possession, as the tenant became the owner of the property and that he can no longer seek protection under the provisions of the Act. A perusal of this judgment shows that the same was rendered prior to the amendment to Section 38E of the Act by Act 2 of 1979 which introduced the

above re-produced proviso. Therefore, the said judgment has no relevance to the present case.

11. However, the question that remains to be considered is, whether on the facts of this case, the petitioners are entitled to restoration of possession. In paragraph 5 of the written statement filed in O.S. No. 16 of 1978, the petitioners averred as under:

That as regards the para 4 of the plaint it is submitted that the R.D.O. Vikarabad has rightly issued ownership certificate u/s 38E in favour of the defendants and so the allegation and statement made in the para are false and so denied. It is submitted that the defendants are in actual possession and enjoyment of the suit land, therefore the suit for injunction is not maintainable as the plaintiff is not in possession of the suit land on the date of filing the suit and also prior and after. D.2 to D.6 were dispossessed in 1977 and so D.2 to D.6 were not in possession of the suit land again by R.I. under panchanama on 6.6.1978. Since then the defendants are in possession and enjoyment of the suit land.

12. From the above-mentioned averments, it is clear that after the grant of Section 38E certificate, the petitioners' possession was restored by the Revenue Inspector under panchanama on 06.06.1978. In my opinion, once the tenants, in whose favour ownership certificate has been issued u/s 38E of the Act, have been put in possession of the property, they cannot approach the Tahsildar again and again for restoration of possession whenever they are dispossessed for, they no longer continue to be under protection of the provisions of the Act as they have evolved into full-fledged owners with the issuance of the ownership certificate u/s 38E of the Act. If they are subsequently dispossessed, they can only approach the competent civil Court by way of a suit. This view of mine is fortified by the judgment of this Court in Jupudi Bhushanam Vs. Joint Collector and Others,

13. In the light of the above discussion, I am in agreement with the conclusion arrived at by the learned Joint Collector in the impugned order though for different reasons. The petitioners having become owners of the property are entitled to seek restoration of their possession as owners thereof through a civil Court. Accordingly, while holding that the petitioners are the owners of the property to the extent of Ac.1.34 1/2 guntas, they are permitted to file a civil suit for recovery of their possession, in accordance with law.

14. The Civil Revision Petition is, accordingly, allowed to the extent indicated above. As a sequel to allowing the civil revision petition, C.R.P.M.P. No. 2030 of 2012 is disposed of as infructuous.