
(1976) 11 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4855 and 4948/75

Ravipati Seetharamaiah

APPELLANT

Vs

The Head Quarters Dy. Tahsildar, (Tenancy Dy. Tahsildar,
Tenali) and others

RESPONDENT

Date of Decision : 10-11-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1976) 11 AP CK 0006

Hon'ble Judges : Gangadhara Rao, J

Bench : Single Bench

Advocate : Venkataramana, for the Appellant; A. Hanumantha Rao, for the Respondent

Final Decision : Allowed

Judgement

The Hon'ble Mr. Justice Gangadhara Rao

1. Sri Ravipati Seetharamaiah is the petitioner in both these Writ Petitions. He claims to have taken two acres of land of Sri Divi Ranganadha Charyulu, the 2nd respondent on lease on 8-4-1974 on an annual rental of Rs. 150/- for a period of three years. According to him pursuant to the lease agreement he was put in possession of the land and he had cultivated the land; while so differences arose between him and Ganta Ramakrishnayya, the 3rd respondent. The 3rd respondent is openly proclaiming in the village that the 2nd respondent would execute another lease in his favour and oust the petitioner from possession of the land and he is trying to speed the lady's fingers crop which the petitioner has raised in the land. Therefore he filed the petition, A.T.P. 1 No./85F, before the Headquarters Deputy Tahsildar, Tenali under S. 16 of the Andhra Tenancy Act, 1956 for restraining the respondents 2 and 3 by a permanent injunction from interfering with his possession of the land. Pending that petition he filed an (sic) application for a temporary injunction. The Deputy Tahsildar granted a temporary injunction on 2-7-1975 against respondents 2 and 3. While so, without notice

either to the petitioner or his counsel, the Deputy Tahsildar modified the interim order of injunction dated 2-7-1975 by his order dated 7-7-1975 restraining both the parties from entering into the land. Subsequently, on an application filed by the 3rd respondent, the Deputy Tahsildar, without giving notice to the petitioner or his counsel, passed another order dated 17-9-1975 ante dating it as 15-9-1975 vacating the interim injunction granted in favour of the petitioner on 2-7-1975. So be filed W.P. No. 4948 of 1970 to quash the order of the Deputy Tahsildar dated 7-7-1975 and W.P. No. 4855 of 1975 to quash the order of the Deputy Tahsildar dated 15-9-1975. The 3rd respondent has filed a counter affidavit stating that the petitioner did not produce the lease agreement before the Deputy Tahsildar and even if there is any such agreement it must have been connected for the purpose of litigation and in any case it is invalid in law. He stated that he had entered, into a registered lease deed dated 28-6-1975 on an annual rental of Rs. 600/- for a period of six years with the landlord, the 2nd respondent, that he was put in possession of the lands and he had been cultivating then. He denied that the petitioner was in possession of the lands and he had raised lady-finder crop in the lands. He also submitted that the tenancy application is not maintainable, since no relationship of landlord and tenant exists between the parties and therefore the Deputy Tahsildar had no jurisdiction to entertain the application u/s 16 of the Act. He further submitted that a dispute between the two cultivating tenants inter se cannot be decided by the Deputy Tahsildar. He also contended that the petitioner has a right of appeal u/s 16 (2) of Andhra Tenancy Act and since he has not exhausted it, he cannot maintain this writ petition.

2. The 2nd respondent did not file any counter in these Writ Petitions.

3. Since common questions are raised in both the Writ petitions they are disposed of by this judgment.

4. Sri A. Venkataramana, the learned counsel for the petitioner had submitted that the order passed by the Deputy Tahsildar on 7-7-1975 and 17-9-1975 are void, for he did not give any notice to the petitioner or his counsel before passing those orders. That the Deputy Tahsildar did not give any such notice is not disputed by the 3rd respondent.

5. On the other hand, Sri Hanumantha Rao, the learned counsel for the 3rd respondent has submitted that the Tenancy court has no jurisdiction to try A.T.P. No. 1/85-F because the relationship of landlord and tenant does not exist between the petitioner and the 2nd respondent and even otherwise, a dispute between two co-tenants cannot be decided by the Deputy Tahsildar u/s 16 of the Act. Secondly the petitioner has a right of appeal under sec. 16 (2) of the Act and since he did not avail himself of it, this court should refuse to exercise its discretion under Article 226 of the constitution. Thirdly neither the Act nor the Rules provided that notice should be given in interlocutory proceedings and, therefore, the order passed by the Deputy Tahsildar is valid.

6. Before I discuss these questions, I have to state that the 3rd respondent filed W.P. No. 6140 of 1975 in court to quash the proceedings in A.T.P. No 1/85-F and suspend the operation of the order of the Deputy Tahsildar dated 1-7-1975. On 23-12-1975 the writ petition was withdrawn by the 3rd respondent and, therefore, it was dismissed.

7. In order to appreciate the contentions raised in this Writ petition it is necessary to refer to section 16 of the Act.

16. Adjudication of disputes :--(1) Any dispute arising under this Act between a landlord and a cultivating tenant, including any question relating to the determination of fair rent or the eviction of a cultivating tenant shall on application by the landlord or the cultivating tenant, as the case may be decided by the Tahsildar after making an inquiry in the manner prescribed.

(2) Against any order passed by the Tahsildar under sub-section (1), an appeal shall lie to the Revenue Divisional Officer, within thirty days of the passing of the order, and the decision of the Revenue Divisional Officer on such appeal shall be final

8. A reading of the first part of section 16 (1) shows that any dispute arising under the Act between a landlord and a cultivating tenant can be decided by the Tahsildar. The language is comprehensive enough to take in any dispute between both of them. When that section lays that "including any question relating to the determination of fair rent or the eviction of a cultivating tenant" it does not mean that only those two questions can be decided by the Deputy Tahsildar. The Legislature has obviously used those words in order to make it clear beyond any doubt that those two questions also can be decided by the Tenancy Tahsildar. The expression "including" in the Section does not put out the width and the amplitude of the first part of the section which says that any dispute arising under this Act between a landlord and a cultivating tenant can be decided by the Tahsildar. On the other hand, the expression "any dispute" is significant enough to show that it is used in a comprehensive sense.

9. It is true that the section applies only when a dispute arise under that Act between a landlord and a cultivating tenant. If there is no relationship of a landlord and a cultivating tenant Section 16 is not applicable and the Tenancy Tahsildar will have no jurisdiction to decide the dispute. It is only when the relationship of landlord and tenant exists, the Deputy Tahsildar gets jurisdiction to decide any dispute arising under the Act. Thus it is a jurisdictional fact. It is now well settled that the Tenancy Tahsildar is competent to decide that jurisdictional fact. Similarly, in a dispute raised by a person claiming to be the cultivating tenant against a landlord, if the landlord were to contend that he is not the cultivating tenant but some other person is the cultivating tenant, the Tenancy Tahsildar will have jurisdiction to decide as to whether the petitioner is the cultivating tenant or not. If he decides that the petitioner is the cultivating tenant but not some other person, then he will have jurisdiction to decide the

dispute under the Act. If he were to decide that the petitioner is not the cultivating tenant then he will have no jurisdiction to decide the dispute under the Act, Once again it will be a jurisdictional fact and the Tahsildar is competent to decide it in view of the first part of section 16 which says that any dispute arising under the Act between landlord and a cultivating tenant can be decided by him.

10. In this connection, I may refer to some decisions. In Ramanaiah Vs. Vula Bujji Reddy 1962 (2) An WR 416 one Avula Ramalinga Reddy took the land on lease from Rajamannar Setty the husband of Jali Lakshamma. After the death of Rajamanner Setty, Lakshamma leased out the land to Avula Ramalinga Reddy on an increased maktha. One Otturu Ramanaiah obstructed the agricultural operations carried on by Ramalinga Reddy alleging that he had obtained a lease from Jali Lakshamma. Thereupon Avula Ramalinga Reddy filed a petition u/s 16 (1) of the Act before the Deputy Tahsildar, Kovvur, for a declaration that he being a tenant was entitled to be in possession of the disputed land and Otturu Ramanaiah should be precluded from interfering with his possession. That application was obstructed by Ramanaiah and Jali Lakshamma. During the pendency of that application Ramalinga Reddy died and his legal representatives were brought on record. A preliminary objection was raised on behalf of Ramanaiah and Lakshamma that the Tahsildar had no jurisdiction to entertain petition as the relief claimed therein was outside the scope of section 16(1) of the Act. That objection was overruled. Against that an order appeal was preferred by Ramanaiah before the Revenue Divisional Officer, Kavali, and it was dismissed. Thereafter witnesses were examined by both the parties as to whether Ramalinga Reddy was a cultivating tenant and as to whether the tenancy pleaded by Ramanaiah was true. On a review of the evidence the Deputy Tahsildar came to the conclusion that it was not established that Ramalinga Reddy was a cultivating tenant and therefore his legal representatives could not have the right to continue the tenancy and so he dismissed the petition. Then the legal representatives of Ramalinga Reddy filed an appeal before the Revenue Divisional Officer, who reviewed the evidence and came to a contrary conclusion and accordingly allowed the appeal and held that the legal representatives of Ramalinga Reddy were entitled to be in possession of the disputed land. Against his order a Writ Petition was filed in this Court by Otturu Ramanaiah. On behalf of the petitioner it was contended that the dispute raised by Avula Ramalinga Reddy was not a dispute between a landlord and a tenant and it was therefore outside the scope of Sec, 16(1) of the Act, It was urged that the dispute was between Ramalinga Reddy who claims to be the tenant and Ramanaiah who had put forward a competing claim and it should be agitated before the ordinary Civil Court, but not before the Revenue Courts. In that case also the landlord Lakshamma supported Ramaniah and contended that Ramaliga Reddy was never her cultivating tenant. While discussing the question whether the Deputy Tahsildar can decide a dispute between two competing tenants, Seshachalapati J. after referring to Sec. 16(1) of the Act,

observed as follows:--

It is argued that the only question that the tenancy Courts can determine are the questions relating to fair rent and the eviction of a cultivating tenant, and that the tenancy Courts cannot deal with the questions as to whether a particular person claiming the benefits of the Act is a cultivating tenant or not, or whether or not his tenancy is still subsisting

.....

Section 16 (1) speaks of the tenancy Courts having jurisdiction to determine any dispute between the landlord and the tenant including any question relating to the determination of fair rent or the eviction of a tenant. The expression "including", which has been regarded always as a term of enlargement shows that the two specified categories are only illustrative and that the section is designed to comprehend all disputes between the landlord and the tenant including those which are specifically recited.

It is then contended that even though the tenancy Courts can decide any dispute between the landlord and the tenant, it is not open to the tenancy courts to determine who the cultivating tenant is, and that question can only be determined by an ordinary civil court. In this connection, reference has been made to the well known decision of the Privy Council in *Secretary of State V. Mask & Co* (1940) 2 MLJ 140, In my view, the question whether or not a person who claims the benefit of the Act is a cultivating tenant and whether his tenancy still subsists is a question that is ancillary to the exercise of the jurisdiction of the tenancy Courts u/s 16 (1) of the Act. In *Venkata Ramanadham Vs. Venkataratnam* 1960 ALT 301=1959 (1) An WR 7 I have had occasion to deal with the scope of section 16 (1) and the questions that the tenancy authorities are empowered to determine as ancillary to the exercise of their jurisdiction under the terms of the Act. I held that the Tahsildar, in an application u/s 16 (1) of the Tenancy Act, has the right to determine whether between the parties to the dispute there is a subsisting relationship of landlord and tenant. It is unnecessary to cover the same ground once again. I hold, therefore, that it is competent for the revenue courts to determine the jurisdictional fact as to whether a particular person is a cultivating tenant or not, and also whether the tenancy is still subsisting.

11. I agree with the reasoning of this decision and I respectfully follow it.

12. In *Rajaram Totaram Patel Vs. Mahipat Mahadu Patel and Others*, a case arising under the Bombay Tenancy and Agricultural Lands Act of 1948, a Full Bench of the Court held that--

The question whether a person is a tenant is not limited to the narrow issue whether a person is a tenant of a particular landlord irrespective of the question whether the issue is raised by the landlord or a tenant or a co-tenant or any other person. It will still be a question whether a person is a tenant. Therefore,

in our view the question contemplated in section 70 (b) is not limited to an issue between the landlord and the tenant.

13. The learned Judges held that it was the function of the Mamlatdar to decide whether the person was a tenant or not.

14. In Venkata Reddy vs. B. Bhushi Reddy 1970 (2) ALT 237=1970 (11) An. W.R. 226 a Full Bench of this Court, after referring to section 16 (1) of the Act, observed as follows:--

The word including to section 16(1) of the Act does not seem to have been used in order to enlarge the meaning of the words or phrases as occurring in the first limb of that section. The first limb clearly provides for any dispute arising under the Act which would, according to its nature and import, also take in question relating to the determination of fair rent or the eviction of a cultivating tenant which have been included in the definition, for, the question relating to the determination of fair rent or eviction of a cultivating tenant are essentially disputes arising under the Act and not outside the Act so as to make their specific mention as enlarging the scope of section 16 (1) of the Act. That being so, the word "including" in section 16 (1) does not enlarge the expression "in disputes arising under the Act." But, the expression in question relating to the determination of fair rent or eviction of a cultivating tenant is only illustrative. Seshachalapathi J. in Ramanaiah vs. Avula Bujji Reddy 1962 (1) An. W.R. 416 observed that:

The expression "including" which has been regarded always as a term of enlargement shows that the two specified categories are only illustrative and that the section is designed to comprehend all disputes between the landlord and the tenant including those which are specifically recited.

15. The learned Judges further observed--

A reading of this sec. 16 (1) clearly shows that the necessary Condition for the exercise of the jurisdiction by the Tahsildar under Sec. 16(1) of the Act is the existence of the relationship of landlord and cultivating tenant. As stated earlier, the sections of the Act give the Tahsildar necessary power to decide questions or disputes arising between a landlord and his cultivating tenant. Nothing precluded the Legislature from providing that the decision of the jural relationship of landlord and cultivating tenant would also be within the exclusive jurisdiction of the Tahsildar. On the contrary, the provisions of the Act, as extracted above, clearly indicate that the jurisdiction of the Tahsildar arises only if the jural relationship of landlord and tenant exists but not otherwise.

16. The Full Bench did not take a view different from the one taken by Seshasthalapathi, J.

17. Lastly I may refer to the decision, in R. Raghava Rao Vs. Tenancy Tahsildar Tanuku W.G. Dist. 1976 (1) APLJ 156 of a Division Bench of this Court consisting of Chinnappa Reddy and Jeevan Reddy JJ. That was a case where a person filed a

petition u/s 16 (1) of the Act before the Tenancy Tahsildar to declare him as a tenant and to restrain the landlord from taking forcible possession of the land. It was resisted by the landlord stating that the land was under his personal cultivation and also on the ground that the Tenancy Tahsildar had no jurisdiction to entertain the petition filed by the tenant for a declaration and injunction. After considering the various provisions of the Act the learned Judges observed.

18. "The language of Section 16.....is indeed very wide. There is no apparent reason to give a restricted meaning to the wide language of the section. It is true that the section while conferring jurisdiction upon the Tahsildar to decide any dispute arising under the Act between a landlord and a cultivating tenant has added the words "including any question relating to the determination of fair rent on the eviction of a cultivating tenant. "These words cannot be construed either as limiting or as colouring the disputes in regard to which jurisdiction is conferred upon the Tahsildar. Nor is there any reason to construe the words "including and question relating to the eviction of a cultivating tenant" as applicable only to applications for eviction under section 13 of the Act. Section 13 confers upon the cultivating tenant a right to be not evicted except by an application made to the Tahsildar and upon the grounds specified in the section. When a landlord seeks to evict his cultivating tenant by filing an application u/s 13 there is undoubtedly a dispute relating to the eviction of the cultivating tenant and section 16 is applicable. Where a landlord seeks to evict his tenant forcibly and otherwise than in accordance with section 13 then also there is, equally undoubtedly a dispute relating to the eviction of the cultivating tenant and there is no reason why the dispute should not fall within section 16 of the Act, if the dispute falls within section 16 of the Act the cultivating tenant has the right to apply to the Tahsildar to protect the right conferred upon him by the Act against eviction otherwise than in accordance with the provisions of the Act. If the Tahsildar entertains and decides the dispute and concludes that the possession of the cultivating tenant should be protected he can and must grant the necessary relief to the cultivating tenant by way of an injunction or other prohibitory order to protect the cultivating tenant's possession.....We, therefore, hold that the Tahsildar is competent to entertain an application filed by a tenant for the protection of the right given to him by the special statute and to give appropriate relief by way of an injunction".

19. In paragraph 14, the learned Judges observed as follows:

In *Veeraswamy Vs. Sub Collector Narsapur* 1974 (2) APLJ 397 Kondaiah J. held that an application such as the one with which we are concerned was maintainable though the principal question which the learned Judge decided was whether the Tahsildar was competent to investigate into jurisdictional facts. In *Srinivasa Rao v. Deputy Tahsildar* 1974 (2) APLJ 27 a similar question came up before Madhava Reddy J., who expressed a view identical with the view expressed by one of us in *W. P. No. 4521/1973*. Madhava Reddy J., also expressed the view that section 16 was applicable only to cases where the status

of the cultivating tenant was not itself in dispute. We see no reason why there should be any such limitation. The question whether a person claiming to be a cultivating tenant is a cultivating tenant or not is a jurisdictional fact which the Tahsildar is certainly competent to decide. We think it is needless to refer to the various cases on the point many of which have been collected and quoted by Kondaiah J., in *Veeraswamy v. Sub-collector Narsapur* 1974 (2) APLJ 397. The decision of Madhava Reddy J., in *Srinivasa Rao V. Deputy Tahsildar* 1974 (2) APLJ 27 is overruled

20. In view of these decisions I hold that the Tenancy Tahsildar has jurisdiction to decide the question whether the petitioner is a cultivating tenant or not, inspite of protestations to the contrary by the 2nd and 3rd respondents.

21. Sri Hanumanth Rao has submitted that the petition filed by the petitioner before the Tenancy Tahsildar does not disclose a cause of action against the 2nd respondent much less the 3rd respondent and, therefore the petition is not maintainable. But I am not prepared to decide that question at this stage for more than one good reason. The matter is still pending before the Deputy Tahsildar. The respondents have taken an objection in that petition that the petitioner is not a cultivating tenant. They are matters to be decided on evidence. Further the scope of these two writ petitions is very limited. The only question raised in these two Writ Petitions is whether the orders of the Tahsildar dated 7-7-1975 and 17-9-1975 are valid or not. Therefore, except clarifying the legal position, because it was argued at length it will be most inappropriate for me to decide that question. I leave it to the Deputy Tahsildar to decide it after enquiry.

22. It is true that an appeal lies u/s 16 (2) of the Act to the Revenue Divisional Officer against the orders passed by the Tahsildar. Sri. A. Venkataramana relying upon the decision of the Supreme Court in *Central Bank of India Vs. Shri Gokal Chand*, contended that no appeal lies against an interlocutory order. While construing the words "every order of the Controller made under this Act" in section 38 (1) of the Delhi Rent Control Act 1958 which is in terms similar to section 16 (2) of our Act the Supreme Court held that an appeal does not lie against interlocutory orders which are merely procedural and do not affect the rights and liabilities of the parties. I am of the opinion that an order vacating an interim injunction does certainly affect the rights of parties and, therefore, it is appealable u/s 16 (2) of the Act. But on the ground that the petitioner has not preferred appeals. I am not prepared to dismiss these writ petitions. It is now well settled that the existence of an alternative remedy does not affect the jurisdiction of the High Court to issue a writ. It is a matter to be taken into consideration as to whether I should exercise my discretion or not while issuing a writ. In cases where orders are passed adverse to a party without giving notice to him, the High Court can interfere under Article 226 even if the alternative remedy is not exhausted Vide *Baburam vs. Zilla Parishad* AIR 1969 SC 856. Therefore I overrule the objection of the respondents that these Writ Petitions

are not maintainable.

23. I do not also agree with the learned counsel for the respondents that no notice need be given to the petitioner before vacating the interim injunction granted on 7-7-1975. He says that neither the Act nor the Rules provide for any such notice in interlocutory proceedings. Even assuming it is so, it is now well settled by decisions of the Supreme Court as well as this Court that even if the Act and the rules are silent, still an opportunity should be given on the principles of natural justice, before passing an order that adversely affects the rights and interests of a party.

24. In the result, I negative the contentions advanced by the learned counsel for the respondents.

25. On the facts, of this case, it is not disputed that the Deputy Tahsildar did not give notice to the petitioner before he passed the orders dated 7-7-1975 and 15-9-1975. I, therefore quash them. He should dispose of the interlocutory application filed by the petitioner for an interim injunction after giving notice to the petitioner as well as the respondents. Consequently, these two writ petitions are allowed, but in the circumstances without costs.