

(2013) 09 SC CK 0101

In the Supreme Court Of India

Case No : Civil Appeal No's. 7909-7911 of 2013 (Arising out of S.L.P. (C) No's. 33704-33706 of 2011)

Satish Mutually Aided Cooperative Housing Society Ltd.

APPELLANT

Vs

Yamjala Malla Reddy and Others

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Rules, 1951 — Rule 11

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 38E, 48A

Citation : (2013) 11 SCALE 244 : (2013) 9 SCC 28

Hon'ble Judges : Dipak Misra, J; Anil R. Dave, J

Bench : Division Bench

Advocate : Sridhar Potaraju, D. Julius Riamel and Gaichangpou Gangmei, for the Appellant; U.U. Lalit and Ananga Bhattacharyya, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted in both the special leave petitions.
2. These appeals are directed against the common judgment and order dated 15.4.2011 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal Nos. 2219 and 2304 of 2005 and C.R.P. No. 1368 of 2010.
3. The disputes in these appeals relate to lands bearing Sy. Nos. 246 to 262, 265 to 269, 430 to 448, 454, 460 to 464, 517, 538 to 540 situated at Bowrampet Village, Qutubullapur Mandal, Ranga Reddy District. As the facts would unfurl, Government of Andhra Pradesh issued a notification under the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short "the 1950 Act"), and thereafter, the revenue authority conducted an inquiry as per the notification of 1973 and determined that the ownership stood transferred to the protected tenants with effect from 1.1.1973. The Respondents herein, as protected tenants of the said lands, were granted requisite certificate u/s 38E of

the 1950 Act. As pleaded, the Mandal Revenue Officer (MRO) in exercise of powers under the A.P. Rights in Land and Pattadar Passbooks Act, 1971 (for short "the 1971 Act") issued pattadar passbooks in respect of the land in their favour.

4. The Respondents and some of the legal heirs of the protected tenants alleged to have executed a General Power of Attorney (GPA) in favour of one Laxma Reddy and one S. Venkata Reddy, who taking advantage of the alleged GPA, made certain alienations between the years 1982 to 1985. The Appellant-society, on the basis of the alleged sale deeds, made an application before the MRO and obtained order dated 13.3.1997 behind the back of the Respondents deleting their names from records of rights in land revenue and inserted the names of the members of the Appellant-society in the column of possession. That apart, there was cancellation of the pattadar passbooks earlier granted in favour of the answering Respondents.

5. Being aggrieved, the Respondents preferred an appeal before the Revenue Divisional Officer (RDO) who set aside the order dated 13.3.1997 passed by the MRO. Being dissatisfied, the Appellant challenged the said order before the Joint Collector by filing revision petitions D5/5191, D5/5192 and D5/5193 of 1999. During the pendency of the said revision petitions, the RDO conferred final certificate of ownership on 26.4.2000 in favour of the Respondents u/s 38E of the 1950 Act declaring them to be owners in respect of the scheduled land with effect from 1.1.1973. The grant of final certificate by the RDO, referred to as above, was also challenged by the Appellant before the Joint Collector by way of an appeal in F2/3809/2000. The Joint Collector by a common order dated 30.7.2001 dismissed the revisions filed by the Appellant holding that neither the Appellant-society nor its members have the locus standi to agitate the matter and, therefore, are not entitled to seek any relief under the Record of Rights Act. Vide another order dated 2.3.2002, the Joint Collector dismissed the appeal of the Appellant in F2/3809/2000 holding that there was no infirmity in the order of the RDO in granting final certificates to the Respondents.

6. The order of the Joint Collector dated 30.7.2001 was challenged by the Appellant before the High Court in W.P. No. 7893 of 2002. The learned single Judge, by order dated 11.4.2005, allowed the writ petition. The said order came to be assailed in Writ Appeal Nos. 2219 and 2304 of 2005. While the writ appeals were pending, the Appellant challenged the order of the Joint Collector dated 2.3.2002 confirming grant of final certificate to the Respondent in C.R.P. No. 1368 of 2010.

7. It is apt to note here that while the proceeding for the justifiability of the grant of certificate before the revenue authority was continuing, a civil suit was filed for permanent injunction. The learned trial Judge declined to grant any injunction. The factum of issuance of GPA and consequence alienation is the core issue which was pending in the civil suit. It is requisite to mention here that another suit OS No. 201 of 1999 has also been filed and both the suits are pending in the Court of Principal Senior Civil Judge, Ranga Reddy.

8. At this juncture, we may note with profit that the Division Bench of the High Court heard the writ appeals and the revision petition together and disposed of the same by the common impugned order. While dealing with three matters, the High Court referred to various provisions of the 1971 Act and various aspects of Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 (for short "the Rules") and came to hold as follows:

Thus, on a reading of the Rules referred to above, it is clear that there should be an enquiry before passing a final order and when the members of the Societies, i.e., the writ Petitioners have not purchased agricultural lands, the Act itself becomes inapplicable and, therefore, the Societies at the first instance had no right to approach the Tahsildar/Mandal Revenue Officer for mutation. Having regard to the statutory provisions, the Mandal Revenue Officer ought to have conducted an enquiry and, therefore, the order of the Mandal Revenue Officer is bad and contrary to the aforementioned statutory provisions. The learned single Judge did not take into the matter from this perspective and, therefore, we are of the firm view that the order of the learned single Judge is erroneous being contrary to law and the same is accordingly set aside.

9. After so stating the Division Bench referred to the 1950 Act, the order passed by the Joint Collector, Rule 11 of the Andhra Pradesh (Telangana Area) Land Revenue Rules, 1951 and Section 48A of the 1950 Act and recorded thus:

We have given our anxious thought to the contentions raised by either side. We agree with the submissions of the learned Counsel for the Respondents in C.R.P. No. 1368 of 2010 to hold that the protected tenants have got the certificate of protected tenancy only post the compromise between them and the pattadars. We also agree with the contentions of the Respondents that the G.P.A. holders have misutilised the power given to them. In fact, the G.P. As were taken for the purpose of obtaining loans on the agriculture lands. We have also noticed that the Civil Suits vide O.S. Nos. 584 and 201 of 1999 are pending in the Court of Principal Senior Civil Judge, Ranga Reddy. We have also noticed that the interlocutory applications in the said suit for injunction were also dismissed by the trial Court and this Court confirmed the said order in a Civil Miscellaneous Appeal against the interlocutory applications and the learned single Judge's order in the C.M.A. was also confirmed in a Letters Patent Appeal by a Division Bench of this Court. It was further contended by the learned Counsel for the Respondents in C.R.P. No. 1368 of 2010 that the G.P.A. was given for the purpose of obtaining agricultural loans and not for the purpose of alienation and since there was no consensus for the said action, the sale is also bad on the ground apart from being hit by the provisions of the Tenancy Act.

Without going into the merits in respect of the Civil Suit, we are of the firm view that the order of the learned single Judge in W.P. No. 7893/2003, dated 11.4.2005 is liable to be set aside and C.R.P. No. 1368 of 2010 questioning the grant of 38-E Certificate is liable to be dismissed.

10. After hearing the matter for some time the learned Counsel for both the sides fairly submitted that order dated 13.3.1997 passed by the Mandal Revenue Officer, Qutubullapur Mandal, Ranga Reddy District, should be set aside and a direction should be issued for disposal of the civil suits, namely, O.S. No. 201 of 1999 and O.S. No. 584 of 1999 pending before the 1st Additional Senior Civil Judge, Ranga Reddy District, on their own merits uninfluenced by any of the observations made by the High Court. It has also been agreed at the Bar that the order passed by the High Court in CRP filed against the order dated 2.3.2002 passed by the Joint Collector, Ranga Reddy District confirming the grant of final certificate of ownership by the Revenue Divisional officer, Ranga Reddy District, East Division, dated 26.4.2000 u/s 38-E of the 1950 Act should be set aside and the CRP should be directed to be heard by the learned single Judge of the High Court afresh within a specified period.

11. Regard being had to the consensus arrived at, we modify the order passed in the writ appeals, as agreed to at the Bar, and set aside the order dated 13.3.1997 passed by the Mandal Revenue Officer and further direct that the suits, namely, O.S. No. 201 of 1999 and O.S. No. 584 of 1999 pending before the learned trial Judge shall be disposed within a period of one year without being influenced by any of the observations made by the High Court. As far as CRP is concerned, the same shall be disposed of by the learned single Judge on its own merits. We request the High Court to dispose of the CRP as expeditiously as possible, preferably, within a period of six months.

12. The appeals are disposed of in above terms. There shall be no order as to costs.