

(2010) 09 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10626 of 2001

Smt. Pushpa Patel Chavda, Sri Diwakaran Nair and Patel
Engineering Company Ltd.

APPELLANT

Vs

Mandal Revenue Officer, S.Y. Ramesh yadav and S.Y.
Venkatesh Yadav

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 102, 103, 14, 32, 34
Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 4
Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 — Rule 18

Citation : (2011) 1 ALD 497

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : P. Sri Raghu Ram, for the Appellant; G.P. for Revenue for Respondent No. 1 and A. Pulla Reddy, for the Respondent

Judgement

V.V.S. Rao, J.—The Petitioner filed the instant" writ petition assailing the proceedings bearing No. B/1037/2001, dated 19.03.2001. By the said order while entertaining the application filed by Respondent Nos. 2 and 3 for grant of succession in respect of land admeasuring Acs. 13.26 guntas in survey No. 186 situated at Yapral Village of Malkajgiri Mandal, Ranga Reddy District (hereafter referred to as, the subject land), u/s 40 of the Andhra Pradesh (Telangana Area) Tenancy & Agricultural Lands Act, 1950 (the Act), the first Respondent ordered status quo to be maintained preventing the Petitioner or her agents from converting the agricultural land into non-agricultural land till the disposal of the main petition filed by Respondent Nos. 2 and 3.

2. The brief fact of the matter is as follows. Respondent Nos. 2 and 3 claimed to be the legal heirs of Sangana Boina Venkataiah, statedly, the protected tenant of the subject land. The Petitioner's case is that an extent of Acs. 11.00 in survey No. 186 was purchased by Sri Mohanlal Jairam Chavda, Sri G.M. Chavda and Sri

V.M. Chavda under registered sale deed dated 22.01.1965 from one Sri S. Narayan Reddy, S/o. Mutha Reddy. In subsequent partition, Sri Mohanlal Jairam Chavda got Acs.5.31 guntas. He executed a gift/settlement deed dated 17.06.1976 in favour of the Petitioner. Sri G.M. Chavda so as to convert the land into residential plots got a layout approved and sold plots in 1995. Following the same, the Petitioner also allegedly alienated her share to developer and the land is allegedly converted into urban land with facilities like roads, drainage, power etc.

3. Respondent Nos. 2 and 3 claiming to be legal heirs of protected tenant filed application u/s 40 of the Act for grant of succession. They also prayed to prevent the Petitioner from converting the land into residential plots. Considering the prayer, the first Respondent passed the impugned order directing to maintain status quo. The Mandal Revenue Officer, Malkajgiri, has not filed counter affidavit. Assistant Government Pleader, however, submits that the matter is still pending before the Mandal Revenue Officer.

4. Respondent Nos. 2 and 3 filed counter affidavit along with W.V.M.P. No. 2582 of 2001. While asserting that the subject land belonged to their grandfather as a protected tenant, that he did not surrender the land, that the sale in favour of the Petitioner's predecessors is void, that the subsequent gift deed dated 17.06.1976 in favour of the Petitioner does not confer any right on the Petitioner, and that the mere earmarking of the land for non-agricultural purpose does not defeat the rights of the protected tenants, they contend that the first Respondent can decide all the questions, especially, when there is no dispute among the legal heirs. The Petitioner has filed a reply affidavit mainly referring to the provisions of the Act perceived by her to be relevant for the purpose of the case.

5. Counsel for the Petitioner relies on the decision of this Court in Syed Abdul Majeed and Others Vs. Joint Collector-II and Others, and submits that the Mandal Revenue Officer has no jurisdiction to entertain the petition. He also relies on Roshan Ali Khan v. Raja Kishendas 1968 (2) ALT 662 and contends that the Act has no application when the land is notified as reserved for urban, non-agricultural or industrial development.

6. The point argued and sought to be sustained is with regard to the jurisdiction of the Mandal Revenue Officer to grant succession u/s 40 of the Act. The incidental question -at least for the purpose of this case, is whether the Mandal Revenue Officer's jurisdiction, if any, is ousted by a notification u/s 102(e) of the Act.

7. Insofar as the first issue is concerned, the question is no more res integra. In Syed Abdul Majeed the issue was considered in the light of the various provisions of the Act and it was held as under.

The position in the case of protected tenancy in respect of which a certificate u/s 38E of the Act is not obtained is no different. Section 40 of the Act only declares that protected tenancy is heritable and that legitimate lineal descendants by

blood or adoption of protected tenant shall be entitled to hold tenancy on the same terms and conditions on which such protected tenant was holding the land at the time of his death. The same does not confer any power on any Revenue Authority much less MRO to decide disputed questions of succession. For instance if a question arises as to whether a person claims that he is a legitimate lineal descendant by blood or adoption, can it be decided by MRO. Legitimacy of a child is a matter for the Court to decide determining on the evidence as well as legal presumptions well recognized in law. Similarly, if there is a dispute between two or more persons claiming to be lineal descendants of the protected tenant, if their predecessor had already obtained a certificate u/s 38E of the Act and became absolute owner, it is not for the MRO to decide the question, Similarly, in the case of a protected tenant, who did not obtain a certificate u/s 32 of the Act, the MRO cannot decide the question, though it can be a matter of enquiry under the Rules, which essentially deal with preparation of preliminary record of tenancies of agricultural lands.

8. The effect of Section 40 of the Act read with Rule 14 of the Andhra Pradesh (Telangana Area) Tenancy & Agricultural Lands Rules, 1950 (vide Notification (Revenue) No. 41, dated 17.08.1950) (the Rules), for the purpose of Section 38-E of the Act is that if there is no dispute among the legal heirs of protected tenant -declared as such, the procedure contemplated under Rule 14 of" the Rules has to be followed. Dealing with this aspect, in Syed Abdul Majeed the following observations were made.

The Rules made by the Government in accordance with powers u/s 97 of the Act contemplate preparation of preliminary record of tenancy within a period of one month from the date of publication of Rules, announcement by beat of drum, the list of or record of tenancies and obtaining objections by any person evicted. All the objections initially are to be disposed of by the Patwari and forwarded to the Office of the Tahsildar for further enquiry whereupon the Tahsildar has to conduct further enquiry before amending the entries in the preliminary record of tenancies. Against the provisional record of tenancies prepared by the Patwari and. Tahsildar an appeal is provided under Rule 11. Apart from this, Rule 14 provides for recognition of the rights acquired subsequent to preparation of preliminary or provisional record of tenancies...

Here again any person who acquires any interest in the land either as a holder or a tenant by succession, survivorship, inheritance, partition, purchase, gift or otherwise, shall have to report such acquisition to the Tahsildar of the area, who shall enter such acquisition in the register of mutation. While dealing with the applications made under Rule 14, the Tahsildar however does not have the/ role of an adjudicator. It is a matter of simple verification and at that stage there would not be any necessity to issue notice to the landholder to raise objections.

Reading Section 40 of the Act and the Tenancy Rules together, it must be held that though u/s 40 of the Act, Tahsildar has no power to decide questions of succession to the protected tenancy, in the event of acquisition of rights,

Tahsildar can conduct verification under Rule 14 of the Rules and order amendments in the register of mutations. Such a procedure is also contemplated u/s 4 of the A.P. Rights in Land and Pattadar Pass Book Act, 1971 and Rule 18 of the A.P. Rights in Land and Pattadar Pass Book Rules, 1989. The enquiry contemplated for amending mutation in the event of acquisition of rights either by survivorship or succession is altogether different from adjudicating the question of succession. Even while dealing with the application for recording for amendment of entries in the mutation register, if there is a dispute by the applicant, the MRO should relegate such party to the Civil Court.

9. Whether the gazette notification issued under the relevant local laws absolutely and at all times takes the agricultural land out of the purview of the Act? (see Roshan Ali Khan). A finding in absolute affirmative or negative terms cannot be recorded even on this question. A Full Bench of this Court in Sada and Vs. The Tahsildar, Utnoor, Adilabad District and Another,, inter alia, considered the questions as to whether a tenant who obtains ownership certificate u/s 38-E of the Act can maintain an application for restoration of possession u/s 32 of the Act, and whether the tenant who is dispossessed can seek ownership certificate u/s 38-E of the Act. It was held that even a tenant armed with an ownership certificate can maintain an application for restoration of possession u/s 32 of the Act, and that a tenant need not be in possession as on the date of coming into force of the Andhra Pradesh Amendment Act No. 2 of 1979. The relevant findings recorded by the Full Bench for ready reference are extracted hereunder.

But, merely because an opportunity is afforded to those who may object to such grant of possession, it does not mean that, in such proceedings under these Rules dt. 7-5-1980, the ownership certificate can be again questioned. So far as landholders and persons claiming through them and persons who have objected before the grant of the certificate, before the Tribunal are concerned, they cannot be permitted to reagitate the very questions which they either raised or could have raised before the grant of certificate, in this inquiry. Further the ownership certificate is binding on "other persons" having any interest therein provided that if the ownership certificate had been issued under the A.P. (T.A.) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 by following the procedure as envisaged in those rules as explained earlier. In that event the ownership certificate is conclusive evidence against the above said persons and cannot be regitated during the delivery proceedings under the new proviso to Section 38-E(2) read with the Rules dated 7-5-1980.

10. Therefore, it is taken as well settled that who satisfies the requirements of being a tenant u/s 5 of the Act and a protected tenant u/s 34 of the Act has vested rights. Even if a notification is issued in any law relating to Section 102(e) of the Act, such vested rights cannot be defeated. The vested rights can be the right to get the ownership certificate, right to seek restoration of possession either u/s 32 or Section 36 or Section 38-E(2) of the Act or explanation to Section 38-E(1) of the Act or right to seek clarification of

unauthorized occupant u/s 98 of the Act. It may be pointed out that if a protected tenant has already obtained an ownership certificate before the issue of gazette notification relating to Section 102(e) of the Act it would be too farfetched to contend that the Act having made not applicable to such tenancy land, the tenant cannot enjoy the rights. By reason of the deeming provision u/s 38-E(2) of the Act when once a certificate is issued u/s 38-E of the Act it "shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the landholder". Secondly, in a given case where a person is recognized as a protected tenant and is given ownership certificate, he has vested right to seek restoration of possession u/s 32 of the Act read with Sections 34, 36 and 98 of the Act (See Potta Nagabhushanam and another Vs. Revenue Divisional Officer, Kothagudem, Khammam Dist. and others, Such vested right cannot be defeated by any notification relating to Section 102(e) of the Act.

11. What would be the position when a person claiming to be a protected tenant or successor of a protected tenant does not make any efforts under the Act to be recognized as owner of the land u/s 38-E(1) of the Act? As Section 102(e) of the Act makes the Act inapplicable, he cannot maintain any application when once a notification is issued u/s 102(e) of the Act. The remedy of such protected tenant lies elsewhere and the doctrine of eclipse applies, as a result of which, the Mandal Revenue Officer would have no jurisdiction to entertain the original application for grant of ownership certificate u/s 38-E of the Act.

12. There is no dispute that the matter is still pending before the first Respondent. The Petitioner seriously disputes the case of Respondent Nos. 2 and 3 that their grandfather is a protected tenant. In that view of the matter, it is for the Mandal Revenue Officer to enquire into the matter with reference to the records and pass necessary orders. The Counsel for the Petitioner also submits that after obtaining the sanctioned layout the Petitioner and/or her developers sold away the house sites. This is again the matter which has to be verified by the Mandal Revenue Officer. As the matter is pending before the Mandal Revenue Officer for about a decade, this Court directs the Mandal Revenue Officer to dispose of the matter within a period of three months from the date of receipt of a copy of this order after due notice to both the parties.

13. The Writ Petition with the above observations and direction is disposed of accordingly. There shall be no order as to costs.