

(1971) 01 AP CK 0006

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 151 of 1960

U. Pappanna Sastri

APPELLANT

Vs

V. Naga Venkata Satyavati

RESPONDENT

Date of Decision : 20-01-1971

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 13, 2, 3

Citation : AIR 1972 AP 53

Hon'ble Judges : Madhavareddi, J

Bench : Single Bench

Advocate : G. Venkatarma Sastry, for the Appellant; B. Ramalingeswara Rao, for the Respondent

Judgement

Madhavareddi, J.—This petition under Article 227 of the Constitution of India is directed against the order of the Revenue Divisional Officer, Gudivada in A. S. No. 1 of 1968. reversing the order of the Tahsildar, Gudivada in I. A in A. T. P. No. 17/67 and holding that the Tahsildar has no jurisdiction to try a petition for eviction filed against a permanent lessee on the ground of default in payment of rent.

2. The petitioner herein filed the petition A. T. P. No. 17/67 for eviction of the respondent-tenant u/s 13 of the Andhra Tenancy Act, hereinafter referred to as "the Act" alleging that he had committed default in payment of rent for four consecutive years. The tenant filed an I. A. before the Tahsildar contending that in as much as he is a permanent lessee, the petitioner could not be deemed to be a "landlord" within the meaning of the Andhra Tenancy Act and therefore the Tahsildar had no jurisdiction to entertain the petition. The Tahsildar, dismissed the petition on the ground that it is not advisable to decide the several issues arising in the case piecemeal. On appeal to the Revenue Divisional Officer by the tenant, he held, basing upon a judgment of a learned single Judge of this Court in Civil Revn. petition. No. 247 of 1965 Etc., (since prorated in G. Veeraswamy Etc., v. Upparadasta Pappanna Satrulu. 1969 2 An WR 359 that a landlord who

has granted a permanent lease does not possess a right to determine the tenancy for default in payment of rent as the respondent has been granted a permanent lease. The petitioner has no right to maintain a petition u/s 13 of the Act.

3. No doubt in this case the lease in favour of the respondent tenant is described as a permanent lease and evidenced by a registered document. But one of the terms of the said lease is that in case of default in payment of rent for two consecutive years, the landlord shall have the right to evict the tenant. Section 2(f) of the Andhra Tenancy Act defines "landlord" as follows:-----

"2(f):-----Landlord means the owner of a holding or part thereof who is entitled to evict the cultivating tenant from such holding or part, and includes the heirs, assignee legal representatives of such owner, or person deriving right through him."

That the petitioner was the owner of the land and he had granted the permanent lease in favour of the respondent-tenant is admitted. In order to satisfy the definition of "landlord" under the Andhra Tenancy Act, the only other requirement to be satisfied is that the petitioner, who is the owner of the holding should be entitled to evict the cultivating tenant from such holding. The lease-deed as already observed. clearly gives such a right to the landlord in the event of the lessee committing default in payment of rent for two consecutive years. A Bench of this Court in K. Sesharatnamma v. Akkineni Satyanarayana (1963) 2 An WR 32 dealing with a similar case where the landlord who had granted a permanent lease and sought to evict the permanent lessee would be deemed to be a landlord within the meaning of the Act, held as follows:-----

"It is seen from the Section 2(f) that the essential ingredient of the definition "landlord" is the right to evict the cultivating tenant. In order to avail himself of the right derived from Section 13, the lessor should be entitled to evict the cultivating tenant. We have, therefore, to see whether under the permanent lease the lessor had reserved to himself the right to evict the lessee for non-payment of rent.:"

Having regard to the above principle laid down by the Bench of this court which is binding on me and having regard to the terms of the present permanent lease granted by the petitioner in favour of the respondent. I have no option but to hold that the petitioner is a "landlord" within the meaning of the act and therefore, entitled to file a petition u/s 13 of the act for eviction. Whether in fact there has been default or not is a matter for enquiry by the Tahsildar. But as per the terms of the lease deed he petitioner is clearly entitled to evict the respondent on proof of default in payment of two consecutive years" rent.

4. Mr. Ramalingeswara Rao, learned counsel for the respondent tenant contended that the terms of a similar lease deed between the present petitioner and some other tenants were construed by my learned brother Chinnappa Reddi, J. in (1969) 2 AnWR 359 and it was held:-----

"Ryots possessing permanent tenancy rights are not persons holding lands under such tenancy agreement and are therefore not "cultivating tenants" within the meaning of the act. Landlords to be landlords within the meaning of the Act must possess the right to determine a tenancy on the expiration of the period of lease. A landlord who has granted a permanent lease does not possess such a right even if he has reserved to himself the right to determine the tenancy for default of payment of rent. Therefore and Andhra Tenancy Act does not apply to cases where tenants possess permanent tenancy rights even though the landlord possesses a limited right to evict."

5. In the decision relied upon by the learned counsel it does not appear that the binding decision of the Division Bench of this court in (1963) 2 An WR 32 was noticed. "Cultivating tenant" is defined in Section 2(c) of the Andhra Tenancy Act as follows:-----

"2 (c): -----"Cultivating tenant" means a person who cultivates by his own labour or by that of any other member of his family or by hired labour under his supervision and control, only land belonging to another under a tenancy agreement. express or implied, but does not include a mere intermediary."

6. It would be noticed that the definition of "cultivating tenant" does not refer to the duration of the tenancy agreement. The definition takes in tenancies for fixed period as well as permanent tenancies. It does not even refer to the tenant's liability to be evicted on the happening of certain contingencies. It merely lays down that person who cultivates any land belonging to another under a tenancy agreement would be a cultivating tenant. The respondent-tenant in this case satisfies this definition and the petitioner satisfies the definition of "landlord" u/s 2 (f). Section 13 of the Act gives a right to the landlord to terminate the tenancy and evict his cultivating tenant during the currency of the lease if he failed to pay the rent due by him within the period of one month from the date stipulated in the lease deed.

7. From none of the provisions of the Act could it be deduced that only such persons who are such owner of a holding and who are entitled to evict a cultivating tenant on committing default in payment of rent at the end of one year alone should be treated as landlords. What all is required by the Act is that the owner of the holding should have reserved for himself the right to evict the tenant. In the instant case such rights is reserved though it could be exercised only in the event of default for two consecutive years. All the same the right to evict the cultivating tenant exists. Once that fact is established the principle laid down by the Division Bench of this court in (1963) 2 AnWR 32, would be attracted. The petitioner is, in my view entitled to maintain a petition u/s 13 of the Act and the Tahsildar has jurisdiction to entertain the same.

8. Inasmuch as in coming to this conclusion I am only following the principle laid down by a Division Bench of this court in (1963) 2 AnWR 32 though I am disagreeing with the principle ratio of the decision of my learned brother

Chinnappa Reddi, J. in (1969) 2 An WR 359 it is not necessary to refer the matter for consideration by a Division Bench. The order of the Tahsildar also, in my opinion, is erroneous. When a question of jurisdiction was raised and it was contended by the respondent-tenant that in view of the terms of the lease, as embodied in the registered document, the Tahsildar had no jurisdiction to entertain a petition u/s 13 , it was his duty to dispose of the same at the outset. That order also cannot therefore be sustained.

In the result, this petition is allowed and the order of the Revenue Divisional Officer and that of the Tahsildar are set aside. The Tahsildar is directed to dispose of A. T. P. No. 17 of 1967 on merits in accordance with law. No Costs.

9. Petition allowed.