

(2005) 08 AP CK 0072
In the Andhra Pradesh High Court
Case No : CRP No. 3266 of 2005

Vasi Krishna Murthy and Others

APPELLANT

Vs

Lakshmipathi Vari Devasthanam, Movva Mandal and Others

RESPONDENT

Date of Decision : 10-08-2005

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 16, 18
Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 26, 32
Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 82
Constitution of India, 1950 — Article 227
Contract Act, 1872 — Section 186
Evidence Act, 1872 — Section 114

Citation : (2005) 5 ALD 528 : (2005) 5 ALT 464 : (2005) 3 APLJ 73

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : T.S. Anand, for the Appellant; M. Vidyasagar, for the Respondent No. 3., for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioners filed ATC No. 15 of 1991, before the Tenancy Tribunal-cum-District Munsif, Avanigadda (for short "the Tribunal"), u/s 16 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short "the Tenancy Act"), for a declaration that they are the cultivating tenants, in respect of Ac.21-60 cents of land, belonging to the first respondent Devasthanam. They pleaded that they have been inducted into the land, as tenants, by the then Chairman of the Devasthanam, and subsequently, the second respondent granted tenancy rights, during his tenure. It was their case that they have been paying the rent of 325 bags, per year, to the Chairman and he, in turn, used to remit the rent amount to the Executive Officer of Devasthanam. They complained that even while the tenancy was subsisting, the first respondent sought to auction the leasehold rights, in respect of the lands.

2. The second respondent is the Chairman of the Trust Board at the relevant point of time and the third respondent is the member of the founder family. Respondents 2 and 3 remained ex parte in the proceedings. The Devasthanam pleaded that there never existed any relationship of tenant and landlord, between the petitioners itself.

3. Through its order, dated 31-10-1996, the Tribunal dismissed the ATC, holding that the petitioners were never the tenants of the Devasthanam. Aggrieved thereby, the petitioner filed C.M.A. No. 94 of 1996, before the Court of District Judge, Krishna at Machilipatnam. The lower appellate Court dismissed the appeal on 29-4-2005. Hence, this revision under Article 227 of the Constitution of India.

4. Sri T.S. Anand, learned Counsel for the petitioners, submits that there is voluminous evidence on record, including the admissions by the witnesses examined by the respondents, to prove that the petitioners are the tenants in respect of the lands in question. He contends that though there did not exist any written lease in favour of the petitioners, the record discloses that the successive Chairman of the Trust Board, acting as the agent of the Devasthanam, has leased the lands to the petitioners.

5. As regards the view taken by the lower appellate Court, in relation to non-applicability of the provisions of the Tenancy Act, in view of the recent amendments, he submits that such amendments are only prospective in operation, and that the proceedings initiated for declaration of the rights of the parties, vis-a-vis, the lands held by Hindu Religious Institutions (hereinafter referred to as "the Endowment lands") do not either abate, or become incompatible. He has placed reliance upon certain precedents, in support of his contention.

6. Sri M. Vidya Sagar, learned Counsel for the Devasthanam, submits that the petitioners were never granted any lease in respect of the lands. He submits that the second respondent and his predecessor have inducted the petitioners into possession of the lands, with a mala fide intention, contrary to the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Endowments Act"). According to the learned Counsel, whatever may have been the merits, or maintainability of the proceedings initiated by the petitioners, with the amendments to the Tenancy Act and Endowments Act, through Acts 27 and 28 of 2002, the claim of the petitioners cannot be either maintained, or sustained, in any manner.

7. From the submissions of the learned Counsel for the parties, the following points arise for consideration, in this revision:

(a) Whether the present proceedings are barred, in view of the amendments carried to the Tenancy Act and the Endowments Act.

(b) Whether the petitioners have established their rights of tenancy, over the lands in question?

8. The Endowments Act provides for the administration of Hindu Religious Institutions and the management of the properties held by them, Section 82 thereof brings about a statutory termination of existing tenancies, in respect of the Endowment lands. A special provision was made, in respect of tenancies, in favour of landless poor. This provision was challenged in a writ petition before this Court. The writ petition was allowed, and the provision was held to be unconstitutional. In a writ appeal, the Division Bench concurred with the same view, with certain modifications. In *State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others*, , the Supreme Court reversed the judgment of this Court, and upheld the validity of Section 82 of the Endowments Act. The provisions of the Tenancy Act were applicable to the tenancies, in respect of Endowments lands also. The implications that arose, on account of upholding of Section 82 of the Endowments Act, vis-a-vis, the applicability of the Tenancy Act, were dealt with by the Supreme Court, and it was ultimately observed that it is for the Legislature of the State, to take appropriate measures, in this regard. The relevant paragraph reads as under:

"It is a matter of policy with the Legislature as to whether all provisions of the Tenancy Act should be exempt in its application to the charitable or religious institution or endowments in their entirety."

Subsequent to the judgment of the Supreme Court, the A.P. State Legislature stepped in, and enacted Act 27 of 2002. Through this, Section 18(f) was added, as a result of which, the provisions of the Tenancy Act were made inapplicable to the Endowment lands.

9. In the instant case, the tenants filed ATC in the year 1991, by that time, the provisions of the Tenancy Act were applicable to the lands in question. During the pendency of the appeal preferred by them, the Tenancy Act was amended. The contention on behalf of the petitioners is that there is nothing in the Amending Act 27 of 2002, to suggest that the proceedings which are already pending in relation to such lands, would terminate, and in the absence of such a clause, the proceedings need to be continued, without any interruption.

10. In this regard, two aspects need to be taken into account. The first one is that irrespective of the question, as to whether the proceedings, initiated under the Tenancy Act, in respect of Endowment lands, terminate consequent on the amendment to Section 18 of the Tenancy Act, Section 82 of the Endowments Act, as interpreted by the Hon"ble Supreme Court, brings about a statutory tenancy, over such lands. With the exclusion of the provisions of the Tenancy Act to the Endowment lands, it becomes impermissible to challenge such statutory termination, by initiating proceedings under the Tenancy Act. The second aspect is as to adjudication of the rights of the parties before the statutory termination and the exclusion of the provisions of the Tenancy Act. It is only this aspect, which becomes relevant for the purpose of this case.

11. The rights, which are vested in the citizens, under any statute, can be taken

away, only through specific and express provisions. There is nothing in the Amending Act, to suggest that the proceedings that were pending under the Tenancy Act, in relation to Endowment lands, would terminate automatically. Here again, a distinction needs to be maintained between the proceedings, initiated by the Hindu Religious Institutions, for eviction of a tenant, on the one hand and those initiated by persons claiming declaration of tenancy rights, as in the present case. The former category of proceedings abate, in view of the statutory termination of tenancy u/s 82 of Endowments Act, and exclusion of the Tenancy Act for such lands. As regards the other category of proceedings, different considerations arise.

12. In *S.A. Hakim Saheb v. P.V.K. Setty*, 1989 (2) ALT 28, a question of similar nature arose before this Court under the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "Rent Act"). Section 32(b) of that Act excluded its application to buildings, that were constructed after 26th August 1957. In relation to a building, which was constructed subsequent to that date, the landlord filed the suit for eviction, and it was decreed on 24th September, 1984. Shortly thereafter on 26-10-1983, through its judgment in *Motor General Traders v. State of A.P.* AIR 1984 SC 121, the Supreme Court struck down Section 32(b) of the Rent Act, as discriminatory and unconstitutional. However, it was left open to the State Government, to issue necessary Notification, u/s 26 of the Act.

13. The State Government issued G.O. Ms. No. 636, dated 29-12-1983, exempting the buildings from the purview of the Rent Act, for a period of ten years, from the date of construction, subject to the rent being below Rs. 1,000/-. In the appeal preferred by the tenant therein, the lower appellate Court set aside the decree, in view of the said G.O. In second appeal, this Court reversed it, by holding that the right of a party to file a suit for eviction of a tenant has to be determined, in accordance with law, that was in force, as on the date of filing of the suit. On finding that no provision was made under the Rent Act, or the Notification, taking away the right of the landlord therein, the decree passed by the Trial Court was upheld.

14. *R.K. Gupta v. Sirtaj Karan*, 1989 (1) ALT 551 (DB), came up for adjudication, before a Division Bench of this Court, under the provisions of the same Act, but in a different set of facts. The suit for eviction was filed in the year 1977, in relation to a building constructed in the year 1968. By virtue of Section 32(b) of the Rent Act, the building was exempted from the provisions of the Act. The suit was decreed on 27-6-1981. C.C.C.A. No. 111 of 1981 was filed before this Court. When the appeal was pending, Section 32(b) of the Act was struck down by the Supreme Court, and G.O. Ms. No. 636 was issued by the State Government, on 29-12-1983, bringing about changes referred to, in the preceding paragraphs. A contention was advanced before this Court to the effect that since the period of exemption of ten years expired in the year 1978, the provisions of the Act become applicable, and that the Civil Court's jurisdiction stood ousted. The same was repelled by the Division Bench, and the judgments rendered by this Court in

two earlier cases, were overruled. The Bench held as under:

"The suit was filed in the year 1977 and we are now in 1988. Though the suit is disposed of the appeal is pending in 1988. The appeal is a continuation of the suit and if the immunity from the operation of the Act is made dependant upon the ultimate disposal of the case within a period of 10 years, it will be an impossibility in reality. The meaningful construction would therefore be that the exemption would apply for a period of 10 years and will continue to be available until the suit is disposed of or adjudicated finally and the decree passed in such a suit is free from the fetters of Section 10. We therefore, reject the contention of the appellant that the Civil Court has no jurisdiction to entertain the suit."

15. From the judgments referred to above, it is clear that unless there is an express provision in an amending Act, the proceedings initiated by parties, to enforce their rights under the unamended provisions, do not get obliterated. The ultimate relief, no doubt, has to be moulded, taking the amendments into account. Even if the grant of any tangible relief becomes impermissible, the declaration of the status for the relevant period cannot be denied. Therefore, notwithstanding the inapplicability of the provisions of the Tenancy Act and despite a statutory termination brought about u/s 82 of the Endowments Act, proceedings initiated by the petitioners for declaration of their status, cannot be said to be barred, though no relief as such can be granted to them for the period subsequent to the amendment. However, even for the limited relief such proceedings cannot be instituted afresh, after the amendments came into force.

16. The next but important question is, as to whether the petitioners established that they are the tenants of the lands in question, at any point of time. The petitioners did not place before the Tribunal, any lease deed, or other documentary evidence, in support of their contention. They pleaded that they were inducted into possession, as tenants, by the Chairman of the Trust Board. However, they have not chosen to examine the persons who are said to have granted lease in their favour. Though the second respondent remained ex parte, nothing prevented the petitioners from taking summons to him, to figure him as a witness. Their inaction in this regard warrants an adverse inference against them, under illustration (g) of Section 114 of the Evidence Act.

17. The Devasthanam placed clinching evidence before the Tribunal to the effect that it had filed ATCs, to resume possession of the lands, from the erstwhile tenants, and thereafter, the Commissioner of Endowments used to issue orders, year after year, enabling the Chairman of the Trust Board, to cultivate the lands as an agent, and to pay the amount stipulated in the order. Ex.B-3 dated 8-11-1990, is one such order, passed in favour of the second respondent. He was required to pay annual rent of Rs. 1,00,000/-, for that year, by cultivating the land by himself. Neither any lease was granted in his favour, was he permitted to sublease the land to third parties. It was pleaded that the petitioners entered the land, on the strength of an interim order, obtained in the present ATC. Necessary entries in the register maintained by the Devasthanam, were marked as Exs.B-6

to B-10. All these entries disclose that the rent was paid by the respective Chairmen of the Trust Board, and not by any third parties. It has come on record that ATC No. 2 of 1988, filed by the petitioners in respect of the same land, was dismissed.

18. Learned Counsel for the petitioners submits that the second respondent is an agent of the Devasthanam, and his acts of granting lease in favour of the petitioners, bind the principal, under Chapter X of the Contract Act. He contends that u/s 186 of the Contract Act, the authority of an agent may be express or implied and that the second respondent can be said to have been conferred with the necessary powers, not only to cultivate the land by himself, but also through an agent.

19. It is difficult to accept the contention of the petitioners. Firstly, the agency created in favour of the second respondent, was governed by specific recitals contained in the corresponding orders, such as Ex.B-3. There is no scope for implying anything, when every thing is express and reduced into writing. Secondly, there is not even a remote possibility for the second respondent, to grant lease or sublease, acting under Ex.B-3. Thirdly, the second respondent himself addressed Ex.B-2, surrendering the possession of the land, after expiry of the agency created under Ex.B-3. He did not state that he has created any tenancy, or other kinds of rights, in favour of the petitioners, or any other persons, nor did the petitioners place any material before the Court, touching on this aspect.

20. In view of the above discussion, the concurrent findings of the Tribunal and the lower appellate Court that there did not exist any relationship of landlord and tenant between the petitioners and the first respondent, does not call for any interference. Therefore, the C.R.P. is dismissed.

21. It is represented by the learned Counsel for the petitioners that there is a standing crop on the land in question, and that the appellants be permitted to harvest the same. The learned Counsel for the 1st respondent disputes the same. Since it is held that the petitioners were never the tenants of the land, this Court is not inclined to permit them to continue in the possession of the land any longer. If they have incurred any expenditure for raising the crop, it shall be open to them, to claim the cost of the same, from the respondents, in accordance with law. There shall be no order as to costs.