

***THE HON'BLE SRI JUSTICE L. NARASIMHA
REDDY
and
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

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CCCA Nos. 86 & 87 of 1993
-

%21-11-2013

J. Narayana & Others.

... Appellants

Vs.

\$ Jainapalli Pedda Kistaiah & others.

...Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri Prabhakar Peri

^ Counsel for respondents : Sri G. Anjappa & Sri L. Sudheer

? CASES REFERRED:

**THE HON'BLE SRI JUSTICE L. NARASIMHA
REDDY
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Between:

J. Narayana & Others.

... Appellants

And

Jainapalli Pedda Kistaiah & others.

.... Respondents.

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REDDY**

and

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CCCA Nos. 86 & 87 of 1993

COMMON JUDGMENT: (Per the Hon'ble Sri Justice L. Narasimha Reddy)

These two appeals are between the same parties. Apart from that, similar questions of law and fact are involved. Hence, they are disposed of through this common judgment. For the sake of convenience, the parties are referred as arrayed in CCCA No.86 of 1993.

2. Very large extent of land in Gudimalkapur and other revenue villages was acquired in the year 1978 for the purpose of laying the 'inner ring road' in the city of Hyderabad. A Notification under Sec.4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') was published on 18.05.1978. The land in Sy. Nos. 216, 217 and 221 of Gudimalkapur revenue village, admeasuring about Ac.1-05 guntas was also notified. Similarly, through another Notification, the land in Sy. Nos. 207, 208, 209, 214 and 215/1, admeasuring Ac.13.14 guntas was notified for the same purpose. The appellants, on one hand, and the

Respondents (other than the Land Acquisition Officer), on the other hand, laid claims for payment of compensation in respect of both the pieces of land. While in the first case, the award was passed on 08.03.1983, in the second case, the award was passed on 24.03.1986. In view of the rival claims made before him by the appellants, the Land Acquisition Officer referred the matters to Civil Court under Sec.30 of the Act. Accordingly, they were taken up as O.P.No.151 of 1983 and O.P.No.267 of 1986 respectively by the Court of the I-Additional Judge, City Civil Court, Hyderabad. Through a common order dt. 25.10.1993, the trial Court held that the respondents are entitled to be paid the compensation and not the appellants. Aggrieved by the same, CCCA Nos.86 & 87 of 1993 are filed against the order and decrees in O.P.Nos.151 of 1983 and 267 of 1986 respectively.

3. Sri Prabhakar Peri, learned counsel for the Appellants submits that the lands were covered by the provisions of Andhra Pradesh (*Telangana Area*) Tenancy and Agricultural Lands Act, (for short 'the Tenancy Act'), and the father of the appellants by name, Pedda Babaiah, was recognized as protected tenant (for short 'the PT'). He contends that in recognition of the rights of the father of the appellants as P.T., the authorities under the Tenancy Act have prepared a list for conferment of rights of ownership under Sec.38-E and the names of the appellants have figured therein. He submits that the trial Court has totally ignored the consequences that flow from the P.T. Certificate and the rights of ownership under sec.38-E of the Tenancy Act. Learned counsel submits that the trial Court was mostly impressed by the fact that the Respondents remained in possession of the land, by the time it was acquired, and if one

goes by the scheme under the Tenancy Act, it makes no difference whether the P.T. or the one, conferred with ownership rights under Sec.38-E is in possession of the land or not. He further submits that assailing the inclusion of the names of the appellants in the list for conferment of rights of ownership under Sec.38-E, the land owners as well as the Respondents initiated proceedings before the appellate authority as well as this Court and in none of those proceedings, they were successful.

Placing reliance upon several precedents, learned counsel submits that it was not at all competent for the trial Court to examine the matter pertaining to the issuance of P.T. Certificate or the inclusion of names for conferment of rights of ownership.

4. Sri G. Anjappa, learned counsel for the Respondents 1 to 7 and Sri L. Sudheer, learned counsel for Respondent No.10, on the other hand, submit that except making a spacious and vague plea that they are the children of a protected tenant and that they have been conferred rights of ownership in respect of the land in question, the appellants did not place any material in support of their case. They contend that undisputedly the Respondents were in possession and enjoyment of the property, for a period, exceeding two decades before it was acquired by the Government under the Act. They further submit that there did not exist any P.T. Certificate in the name of the appellants or their father and just by drawing inference that Ex.A-8 is in favour of the father of the appellants, several claims were being made from time to time. They submit that the appellants were not issued the certificate under sec. 38-E(2) at any point of time and as long as such certificate is not issued, no person can claim

rights of ownership under the Tenancy Act. Learned counsel submit that the trial Court had taken correct view of the matter and the same does not warrant any interference in the present appeals.

5. The trial Court conducted a common trial of both the OPs., and common evidence was recorded. Only one point was framed for consideration, namely, which of the rival claimants are entitled for the compensation for the acquired land, deposited in the Court.

6. On behalf of the appellants, the 3rd appellant deposed as PW-1 and Exs.A-1 to A-6 were marked. Out of them, Ex.A-1 is an order passed by the Revenue Divisional Officer, Ex.A-2 is an order passed by the Joint Collector in appeal filed against the order in Ex.A-1; and Exs.A-3 to A-6 are the copies of pahanies. On the other hand, on behalf of the Respondents, RWs.2 to 4 were examined and Exs.A-7 to A-50 were filed. The point was answered in favour of the Respondents in both the OPs. Here itself, it needs to be noted that the claims before the Land Acquisition Officer included those of the land owner and two sets of persons claiming to be the P.Ts. The Land Acquisition Officer paid 40% of the compensation to the land owner and deposited the remaining 60% in the Court, while making reference under Sec.30 of the Act in respect of one piece of the acquired land. As regards the other, entire amount was deposited in the Court and reference was made under Sec.30 of the Act.

7. In view of the extensive arguments advanced by the learned counsel for the appellants herein, the following points arise for consideration in the present appeals:

- (1) Whether the appellants have established either that they are the protected tenants or owners under Sec.38E of

the Tenancy Act, in respect of the lands in question?

(2) Whether the Respondents were in possession of the lands, by the time they were acquired, and if so in what capacity?

(3) Whether the appellants or the Respondents are entitled to claim the compensation in its entirety or they are entitled to any share?

8. **POINT NO.1:** The Tenancy Act was brought into existence way back in the year 1950 as a measure of agrarian reforms. One Smt. Qutubunnisa Begum was the owner of the lands, which have been acquired. Fairly vast extent of land of Gudimalkapur revenue village, including the land which is the subject matter of these appeals, was acquired. The plea of the Respondents is that their father Pochaiah had six sons, including themselves, Siddaiah, Pedda Babaiah (father of the appellants) and Chinna Babaiah, and that all of them were cultivating the acquired lands by taking the same on lease from Smt. Qutubunnisa Begum. It was also mentioned that the lease was being extended from time to time in favour of the entire family. Though they claimed a semblance of settlement in respect of the family house under Ex.A-7 that is not at all relevant for the purpose of this case. According to the Respondents, their father Pochaiah died somewhere in the year 1949 and in the year 1951, the *patwari* of the village handed over them Ex.A-8, P.T. Certificate, in which the name of "*Baliga*" was written. They pleaded that the entire family was in possession and enjoyment of the property and since the certificate was bereft of any details and full of inaccuracies, they did not take any steps for correction thereof. The actual dispute said to have arisen when a provisional list was published under sec. 38-E(1) in the year 1975 and the landholder raised objections thereto. They plead that, being the

tenants of the land, they are entitled to be paid the entire 60% of the compensation for both the pieces of land.

9. The appellants, on the other hand, pleaded that Ex.A-8 is in the name of their father, and in recognition of their succession, their names were included in the provisional list for grant of ownership rights under sec.38-E(1) of the Tenancy Act. They contend that though, at one stage, the very inclusion was sought to be challenged by filing appeals and revisions, on different occasions, they were successful althrough. Reference is made to Exs.A1, A2, A47 and A48.

10. We are conscious of the fact that a civil Court cannot at all determine the validity or otherwise of a P.T. Certificate, if it is issued validly by competent authority in favour of any particular individual. Similarly, the determination or conferment of rights under Sec.38-E is not amenable to any mechanism, other than the one provided under the Tenancy Act itself. Reference in this context is made to several judgments of the Supreme Court and this Court.

11. In case, Ex.A-8 was issued in favour of any particular individual with proper description in respect of any specific item of land, the said individual can certainly derive benefit of it and even if there exists any rival claim, it is not at all for the civil Court to deal with the same. A perusal of Ex.A-8 discloses that it was issued on 10.12.1951 in the name of one '*Babiga*'. Neither the surname nor the name of the father of the said '*Babiga*' is mentioned. The appellants claim that it was issued in the name of their father.

12. The name of the father of the appellants is '*Pedda Babaiah*'. He is one of the six sons of '*Pochaiah*'. Among the brothers itself, there are two persons, named as Babaiah, i.e.,

‘Pedda Babaiah’ and ‘Chinna Babaiah’. The appellants are not revealing as to when their father died. The Respondents made an endeavour to show that Pedda Babaiah died much prior to the issuance of Ex.A-8.

13. Ex.A-7 is said to be a deed of settlement, dated 1.7.1955. It was signed by the mother of the appellants. On that basis, the Respondents intend to plead that Pedda Babaiah was not alive by the date of Ex.A-7, i.e., 01.07.1954. The evidence of PW-3 is to the effect that Pedda Babaiah died five years before the date of Ex.A-7. That takes the date to 1949. The appellants are not able to demonstrate that the version put forward by PW-3 is not correct. Therefore, it emerges that - (a) Ex.A-8 was issued in the name of a person, whose identity is difficult to ascertain, and (b) it was issued about two years after the death of the father of the appellants.

14. Assuming that the certificate was issued in the name of the father of the appellants, they did not take any steps to get succession on its basis, as provided for under Sec.40 of the Tenancy Act. The justification pleaded there for is that Sec.40 provides for automatic succession in favor of Class-I heirs, and it is not at all necessary for the successors to apply for grant of succession. This plea can be accepted if there is no uncertainty about the attendant facts. There is nothing on record to disclose that the appellants ever made any effort to connect themselves to Ex.A-8. As observed earlier, they were not even aware of the existence of Ex.A-8, till it was produced by the Respondents in the Court.

15. The other plank of argument advanced by the appellants is on the basis of Sec.38-E of the Tenancy Act. Once an individual is recognized as P.T. under that Act and is issued a certificate in

the proforma, he becomes entitled to be conferred with the rights of ownership under Section 38-E, subject to certain conditions, such as, the owner being not in possession of more than two holdings. The conditions with reference to the holdings of the landholder on one hand, and protected tenant on the other hand are required to be complied with. Once a provisional list is published, the *Tahasildar* is placed under obligation to conduct enquiry under sub-section (2), and issue certificate thereafter. The legal consequences that flow from the certificate contemplated under Section 38-E (2) can be discerned from the language employed therein. It reads:

38-E. Ownership of lands held by protected tenants to stand transferred them from a notified date:-

(1) Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, judgment, decree, contract or grant to the contrary, the Government may, by notification in the Andhra Pradesh Gazette, declare in respect of any area and from such date as may be specified therein, that ownership of all lands held by protected tenants which they are entitled to purchase from their land-holders in such area under any provision of this Chapter shall, subject to the condition laid down in sub-section (7) of Section 38, stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such lands;

Provided that where in respect of any such land, any proceeding under Section 19 or Section 32 or Section 44 is pending on the date so notified, the transfer of ownership of such land shall take effect on the date, on which such proceeding is finally decided, and when the tenant retains possession of the land in accordance with the decision in such proceeding.

Explanation:- If a protected tenant, on account on his being dispossessed otherwise than in the manner and by order of the Tahsildar as provided in Section 32, is not in possession of the land on the date of the notification issued thereunder, then for the purposes of the sub-section, such protected tenant shall, notwithstanding any judgment, decree or order of any Court, or the order of the Board of Revenue or Tribunal or other authority, be deemed to have been holding the land on the date of the notification; and accordingly, the Tahsildar shall notwithstanding

anything contained in the said Section 32, either suo-motu or on the application of the protected tenant hold a summary enquiry, and direct that such land in possession of the landholder or any person claiming through or under him in that area, shall be taken from the possession of the landholder or such person, as the case may be, and shall be restored to the protected tenant and the provisions of this section shall apply thereto in every respect as if the protected tenant had held the land on the date of such notification.

(2) A certificate in the prescribed form declaring him to be owner shall be issued by the Tribunal after holding such enquiry as may be prescribed, to every such protected tenant and notice of such issue shall simultaneously be issued to the landholder. Such certificate 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 and all other persons having any interest therein:

Provided that where the land, the ownership of which has been transferred to the protected tenant under sub-section (1), is in the occupation of a person other than the protected tenant or holder of the certificate issued under this sub-section, it shall be lawful for the Tahsildar to restore the possession of the said land to the protected tenant or holder of the certificate, after giving notice of eviction to the occupant thereof, in the prescribed manner.

(3) Within ninety days from the date of notice of issue of the certificate under sub-section (2), every land-holder of lands situated in the area specified in the notification under sub-section (1), shall file an application before the Tribunal for the determination of the reasonable price of his interest in the land which has been transferred to the ownership of a protected tenant under sub-section (1), and if an application is not so filed within such period by the landholder, the Tribunal may suo motu proceed to determine such price and thereupon all the provisions of sub-section (4) to (8) of Section 38 shall mutatis mutandis apply to such application;

Provided that if the protected tenant commits default in respect of any instalment, it shall be recovered by the Government as arrears of land revenue and paid to the landholder:

Provided further that if the whole or any part of the price due to the landholder cannot be recovered as arrears of land revenue, the transfer shall not be effective and the amount, if any, already paid by the protected tenant towards the price shall be refunded to him together with interest at three per cent per annum and the land revenue paid by him, if any, after deducting

therefrom the rent for the period.

(4)

(5) (omitted as not necessary for this case).

16. From a perusal of the above, it is clear that it is only after the certificate is issued under sub-section (2), that the rights of ownership stand conferred upon a protected tenant. Another important aspect is that even where a certificate is issued, it must be followed by determination of the amount to be paid to the land owner and actual payment thereof. The default in payment of price in its entirety or portion thereof would lead to annulment of the ownership.

17. In the instant case the appellants were not issued any certificate of ownership at all. They did not even produce any deed of lease, which contains their names. It was not even pleaded that the price for the land was determined and the same was paid as provided under sub-section (3) of Sec.38-E of the Tenancy Act.

18. Strenuous attempt is made by the learned counsel for the appellants to convince us that the contents of Ex.A-47, Ex.A-48, Ex.A-1 and Ex.A-2 can be treated as conferment of rights of ownership in respect of the land i.e., the subject matter of the appeal i.e., CCCA No. 86 of 1993. It is true that there is a reference to the land in Sy. Nos. 216, 217 and 221 in the documents referred to above. That at the most would lead to a situation where a list of the persons, who are otherwise entitled to be conferred with the rights of ownership, is prepared and the names of the appellants figured therein. However, that is not the end of the matter.

19. While sub-section (1) of Section 38-E is substantive in

nature, the rights thereunder into reality, only can transform or metamorphosis into ownership only when a certificate under Section 38-E (2) is issued. It is important to note that issuance of certificate is not just a ministerial act. It is preceded by an enquiry and is required to be issued in prescribed proforma. The provision makes it amply and abundantly clear that it is only on being issued the certificate, that a person, who was recognized as P.T., would become the owner of the land with effect from the date of certificate. Any stage, preceding the issuance of a certificate, would, at the most be preparatory in nature and the Tenancy Act does not provide for any specific rights in favour of a person, who is not issued a ownership certificate. At the most he would retain the character of a P.T.

20. Exs.A1 and A-2 do not have the effect of conferring of ownership certificate or rights upon the appellants. They are only in relation to certain objections raised in respect of the lease. At any rate, the proceedings under Exs.A-1 and A-2 took place, by which time the lands stood vested in the Government by operation of Sec.16 of the Act. Point No.1 is answered accordingly against the appellants.

21. **POINT NO.2:** Notwithstanding the uncertainty about the nature of rights referable to the Tenancy Act, the fact remains that the Respondents were in possession of the land, till it was acquired by the Government. They filed a bunch of pahanies, particularly, Exs.A-39 to A-43, which cover the period between 1954-55 and 1978-79. They disclose that the Respondents are in possession of the land. That, in fact, was acknowledged by the land owner, in various proceedings. Obviously, recognizing this fact, the Land Acquisition Officer paid 40% of the compensation in respect of the land covered by appeal - CCCA

No.87 of 1993 to the land owner and left the dispute in relation to the remaining 60%, to be resolved by the civil Court. The appellants did not dispute that the Respondents were in possession and enjoyment of the land.

22. It is important to note that if a P.T. or his successors are dispossessed from the land, they can seek the relief of recovery of possession under Section 32 of the Tenancy Act by filing application before the Tahasildar. As a matter fact, they filed an application under Sec. 32 of the Tenancy Act way back in the year 1988 for recovery of possession against the Respondents. That, however, was after the lands were acquired and Notification under Sec.4 (1) of the Act was published. Till today no orders have been passed thereon. The result is that the Respondents are undisputedly in possession of the land and in contrast the appellants were never in possession of the same, till it was acquired. The Point No.2 is answered accordingly.

23. **POINT NO.3:** Strictly speaking, once it is held that the Respondents were in possession of the land and that the appellants did not establish their rights under the Tenancy Act, the decree passed by the trial Court in both the OPs must be upheld. However, we find that even according to the Respondents they were holding the land on behalf of the entire family and they never claimed any exclusive rights for themselves. Out of six brothers, three figured as Respondents and two brothers, namely, Siddaiah and Chinna Babaiah are not claiming. The appellants represent the branch of Pedda Babaiah. We are of the view that the compensation payable in both the OPs., can be divided in four equal shares, and each brother, or their respective branch/legal representative(s) can be allocated one share each. If so done, the appellants would be

entitled to be paid 1/4th of the amount of the compensation.

24. We, accordingly, allow the appeals in part and direct that the compensation shall be apportioned in such a way that the appellants or their representative(s) are paid 1/4th share and the Respondents namely, Pedda Kishtaiah (Respondent No.1), Chinna Kishtaiah (Respondent No.2) and Samaiah (Respondent No.7) or their representative(s) shall be entitled to be paid 1/4th share each. There shall be no order as to costs.

25. Consequently, the miscellaneous petitions, if any pending, shall stand closed accordingly.

L. NARASIMHA REDDY, J

M.S.K. JAISWAL, J

Dt. 21..11.2013

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(Judgment of the Division Bench delivered by
Hon'ble Sri Justice L. Narasimha Reddy)

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