*** THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE**
AND
THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR

+ **WRIT PETITION No.9436 of 2008**

% Dated 23-02-2024

Between:

Oruganti Jeethaiah and another ...Appellants

and

$ The Government of A.P.,
Represented by its Principal Secretary,
Revenue Department, Secretariat Buildings,
Hyderabad and others.

....Respondents

! Counsel for the Appellant : Ms. T.P.S.harsha

^ Counsel for the respondents : Ms. M.Rajeswari

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? Cases referred: :

1. 1990 (1) ALT 237 (DB)
2. (2001) (7) SCC 708
3. (2003 SCC OnLine AP 472 : (2003) 5 ALD 72 : (2003) 4 ALT 632
4. AIR 2005 SC 162
5. AIR 1989 SC 903

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ORDER: *(Per the Hon'ble Sri Justice N.V. Shravan Kumar)*

Ms. T.P.S.Harsha, learned Counsel for the petitioners.

Ms. M.Rajeswari, learned counsel for the respondents.

This writ petition has been filed challenging the Constitutional validity of Section 24 of the A.P. Hindu Religious and Charitable Endowments Act, 33 of 2007 (hereinafter referred to as 'the Principal Act') purporting to add the words "Other than those lands situated Municipalities and Municipal Corporation" after the words "in respect of lease of Agricultural Lands" in Sub-Section 2 of Section 82 of the Principal Act and further adding Explanation-II to Section 82 of the Principal Act, as being unconstitutional, illegal and void.

2. It is the case of the petitioners that the petitioners, along with others, were the protected tenants in respect of the lands bearing Sy.Nos.11, 34, 43, 44, 45, 48, 49, 58, 59, 61, 64 and 65 of Khanamet village, Serilingampally Revenue Mandal, Ranga Reddy District, (hereinafter referred to as 'the subject lands'). The subject lands were earlier belonging to one Bhadrinath, who was the pattedar and landholder while the petitioners and others were protected tenants thereon within the meaning of the term under the provisions of the A.P. (Telangana Area) Tenancy and Agriculture Land Act, 1950 (hereinafter referred to as 'the Tenancy Act'). The said Bhadrinath is

alleged to have conveyed the subject lands, along with some other lands owned by him in Khanamet revenue village, in favour of the 2nd respondent, Gurukul Ghatkesar Trust, by a registered deed dated 02.05.1951 bearing document No.796/1951. In the process of implementation of the provisions of Tenancy Act, the petitioners and others had been recorded as the 'Protected Tenants' of the subject lands while the 2nd respondent was recorded as the 'Landholder' in Khasra Pahani of the year 1954-55 and the same has become final.

3. The petitioners, while referring to Section 38 of the Act, which is provided for the right of the protected tenants to purchase the interest of the landholders subject to certain conditions and limitations. Section 38-A provided for mutual agreement between the landholders and tenants for transfer of the landholders' interest to the protected tenants without any conditions or limitations. While Sub-Section (1) of Section 40 of the Tenancy Act declares the Tenancy as heritable Sub-Section (4) thereof declares that the rights of the protected tenants in the land as 60% and the rights of the landholder limited to 40%.

4. Further, the Andhra Pradesh State Legislature had amended the Tenancy Act by adding Section 38-E thereto vide Act, 15/1971 and brought it into force with effect from 01.01.1973. The act of enforcement of Section 38-E of the Tenancy Act ensured that all the protected tenants to become owners of the lands held by them as protected tenants with effect from 01.01.1973 by operation of statute,

wherever the total lands held by the landholder exceeded two family holdings.

5. It is further submitted that the A.P. Legislature had passed the Amendment Act No.28/2002 on 27.12.2002 purporting to add clause (g) to Section 102 of the said Act and thereafter challenging the Constitutional validity of the said Amending Act 28/2002 dated 27.12.2002 purporting to amend Section 102 of Tenancy Act and also challenging Constitutional validity of Sub-Section 5 of Section 82 of A.P. (Telangana Area) Hindu Religious Institutions and Endowments Act, 1987, thereafter, the petitioners had filed W.P. No.23076 of 2003 and the said writ petition was heard quite for some time by a Bench of this Court and reserved for judgment in April, 2007 and later delivered the judgment on 31.12.2007. In the meanwhile, the A.P. Legislature brought about the impugned amendment by Act No.33/2007 on 14.12.2007. It was therefore obvious that there was no occasion to challenge the validity of the impugned provisions which brought above the amendment to Sub-Section (2) of Section 82 and added explanation-II thereto. By virtue of the same, the petitioners could not become the owners by operation of law and as an alternative plea, the petitioners submitted that they are entitled to purchase the land under the provisions of the impunged Sub-Section 2 of Section 82 of the Act. By the impugned amendment that right has been removed and obliterated by amendment Sub Section 2 of Section 82 of the (Act 30/87) by the impugned Act 33 of 2007. It is further

submitted that since the writ petition was dismissed, the right of the petitioners to purchase the lands in question under the provisions of Sub-Section 2 of Section 82 have also been obliterated and wiped out by the impugned enactment, which is why the present writ petition has been filed.

6. It is further submitted that by the impugned carried amendment to Sub-Section 2 of Section 82 of Act, 30/87 and also by adding Explanation-II to Section 82 by Section 24 of Amendment Act 33 of 2007, the tenants of the lands in Municipalities and Municipal Corporations have been disabled, denied and deprived their right to purchase the lands in their possession while the tenants of the lands else where are entitled to purchase the lands in their possession even after the amendment to Section 102 of the Tenancy Act. Further, the provisions of Sub-Section 2 of Section 82 of Endowment Act before the impugned amendment, would enable the tenants of the Endowment lands to purchase the same on payment of 75% of the market value. The Endowments would get higher rate of consideration while the lands in rural areas, of the endowments would bring for less market value to the Endowments. The lands in Municipalities and Municipal Corporations would certainly bring much higher rates of consideration inasmuch as the market value of the lands in Municipalities and Municipal Corporations would certainly get much higher rates. Therefore, there is no rationale, much less any justification whatsoever for bringing such arbitrary,

prejudicial and discriminatory classification between the tenants of lands in Municipal areas and tenants of lands else where, while both of them remain essentially agricultural lands and tenants remaining as agricultural tenants.

7. The learned counsel for the petitioners submitted that by virtue of the Amendment, the petitioners have already gained vested rights and the distinction between the rural and urban lands is arbitrary and that there is artificial distinction.

8. On the other hand, the learned Additional Advocate General would submit that the Endowments are already suffering from lack of funds and in order to augment the revenue, the Amendment has been made whereby the landless poor would have right to purchase certain lands and sale proceedings, which have been received from the landless poor persons would augment the Endowment and that apart the rights of the petitioners have not taken away and therefore, the classification is reasonable.

9. Heard the learned counsel for the petitioners and the learned Additional Advocate General and perused the material made available on record.

ANALYSIS AND CONCLUSIONS:

10. For better appreciation of the case, Section 82 of the Act is reproduced hereunder:

"82. **Lease of Agricultural Lands:-** (1) Any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowment subsisting on the date of commencement of this Act shall, notwithstanding anything in any other law for the time being in force, held by a person who is not a landless poor person stands cancelled.

(2) In respect of leases of agricultural lands [1][other than those lands situated in Municipalities and Municipal Corporations] held by landless poor person for not less than six years continuously such person shall have the right to purchase such lands for a consideration of seventy five per centum of the prevailing market value of similarly situated lands at the time of purchase and such consideration shall be paid in four equal installments in the manner prescribed. Such sale may be effected otherwise than by tender-cum-public auction:

[2][Provided that if such small and marginal farmers who are not able to purchase the land will continue as tenants provided, if they agree to pay at least two third of the market rent for similarly placed lands as lease amount.

Explanation:— For the purpose of this sub-section 'landless poor person' means a person whose total extent of land held by him either as owner or as cultivating tenant or as both does not exceed 1.011715 hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land and whose monthly income other than from such lands does not exceed thousand rupees per mensum or twelve

[1] Ins. By Act No.33 of 2007, w.e.f. 3-1-2008.
[2] Added by Act 27 of 2002, w.r.e.f. 26-8-2002.

thousand rupees per annum. However, those of the tenants who own residential property exceeding two hundred square yards in Urban Area shall not be considered as landless poor for the purpose of purchase of endowments property.]

[3][**Explanation II** :- For the purpose of this sub-section, small and marginal farmer means a person who being a lessee is holding lands in excess of acres 0.25 cents of wet land or acres 0.50 cents of dry land over and above the ceiling limits of acres 2.50 wet or acres 5.00 dry land respectively they may be allowed to continue in lease subject to payment of 2/3rd of prevailing market rent and excess land held if any more than the above limits shall be put in public auction.]

11. In the case of **S.Narayan Vs. State of Andhra Pradesh**[4], wherein declared that Section 82 of the Endowments Act, as violative of Article 14 of the Constitution of India. By virtue of the same various proceedings before the authorities created under the Tenancy Act were continued. However, the said judgment has been set aside by the judgment of the Hon'ble Supreme Court in appeal preferred by the State in the case of **State of Andhra Pradesh Vs. Nallamilli Rami Reddy**[5] upholding the legality and validity of Section 82 of the Amendment Act.

[3] Added by Act No.33 of 2007, w.e.f. 3-1-2008.
[4] 1990 (1) ALT 237 (DB)
[5] (2001) (7) SCC 708

12. In the case of **Someswara Swami Vari Temple, Nandigam, Settenapalli, Guntur Vs. Degala koteswara Rao**[6], wherein it is held at para 4, which reads as under:

> "……A Full Bench of this Court in *S. Narayana* v. *State of Andhra Pradesh*, 1990 (1) ALT 237, declared that Section 82 of the Endowments Act, as violative of Article 14 of the Constitution of India. In view of uncertainty of the validity of Section 82 of the Endowments Act in the interregnum, various proceedings before the authorities created under the Tenancy Act were continued. The said judgment of this Court has been set aside by the judgment of the Supreme Court in an appeal by the State in *State of Andhra Pradesh* v. *Nallamilli Rami Reddy* (2001) 7 SCC 708 upholding the legality and validity of Section 82 of the Endowments Act. By virtue of the aforesaid Ordinance and the judgment of the Supreme Court referred to above, all the leases between parties in these petitions came to an end on the date of commencement of the Endowments Act and thereafter there is no landlord and tenancy relationship between the institution and the cultivator. A Division Bench of this Court in WP No.28714 of 198, dated 19-2-2002 also held that the provisions of A.P. (Andhra Area) Tenancy Act, 1956 have no application to the Endowments Act in view of the judgment of the Supreme Court referred supra. Therefore, the proceedings before the authorities under the Tenancy Act are not maintainable and the proceedings initiated either by the Institution or by the cultivator are nonest in law".

[6] (2003 SCC OnLine AP 472 : (2003) 5 ALD 72 : (2003) 4 ALT 632

13. Admittedly, the petitioners are the protected tenants as per the provisions of the Tenancy Act and the said lands were utilised for agriculture purpose. By efflux of time and by virtue of urban agglomeration, the said lands have come into Municipalities and Municipal Corporations whereby the lands, though the petitioners being protected tenants, likewise, could not undertake agriculture in such small extent of lands.

14. We are unable to accept the contention of the learned counsel for the petitioners that the exclusion of the petitioners' land by virtue of the Amendment to Section 82 that other than the Municipalities and Municipal Corporations as Amended by the Act 33/2007 with effect from 03.01.2008 such exclusion is unreasonable and is without subsistence.

15. It is pertinent to note that by adding Explanation-II, Sub-Section 2 of Section 82 small and marginal farmer that whoever is holding lands in excess of acres 0.25 cents of Wet land or acres 0.50 Wet or acres 5.00 Dry land respectively would be allowed to continue in lease subject to payment of 2/3 of prevailing market rent and excess land held if any more than the above limits shall be put in public auction.

16. As observed that the lands in Municipalities and Municipal Corporations, the possibility of operating agriculture by the small and marginal farmers would be bleak and exclusion of the lands in

Municipalities and Municipal Corporations is justified for the sole reason that the subject lands, which are not fit for cultivation and if the small and marginal farmers like the petitioners are continued, such lands would be utilised not for agriculture but for other purpose.

17. It is pertinent to note that the utilisation of lands falling in agglomeration areas and in rural areas have varying needs and as such requires different requirements. It is also pertinent to note that the rates of the lands in and around the urban agglomeration are skyrocketing and the said lands cannot be utilised for agriculture since they are fragmented lands. In view of the same, amendment to Section 82 adding Explanation-II is justified for the reason that such lands would not be utilised for any other purpose and can be utilised for promoting the objectives of the Charitable Institutions. In view of the same, challenge to the amendment has no force.

18. Admittedly, the small extents of lands falling in urban agglomeration may not be suitable for agriculture purpose to that in rural areas as there would be vast agricultural lands as such the applicability of provisions of the Act uniformly to all of them will, therefore, be inconsistent with the principal of equality. In view of the same, by applying the test of intelligible differentia, [**E.V.Chinnaiah Vs. State of Andhra Pradesh and Ors**., (AIR 2005 SC 162) & **Deepak Sibal and Ors. Vs. Punjab University and Ors.** (AIR 1989 SC 903)], the classification made by way of the amendment to Section 82 is reasonable and not arbitrary. As such, the Amendment to Section 82

has a rationale basis and has a reasonable connection with the objects of the Act and cannot be said to be discriminatory and in violation of the Article 14 of the Constitution of India. That part, on a careful analysis to the Explanation-II of Section 82 of the Act, the amendment would not take away the rights of the petitioners as they are allowed to continue in lease within the extents specified which the petitioners are otherwise are eligible.

19. In the result, the writ petition deserves to be dismissed. Accordingly the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

ALOK ARADHE, CJ

N.V. SHRAVAN KUMAR, J

Date: 23-02-2024

Note: L.R. Copy be marked.
B/o.
LSK