

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL REVISION PETITION NO.489 OF 2011

ORDER :

This Civil Revision Petition has been directed against the Order of the Joint Collector, Ranga Reddy District in Case No.F2/3950/2009 dated 17.01.2011 by which the Joint Collector allowed the appeal filed by the respondents herein under Section 90 of AP (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (*for short Act, 1950*) which was preferred against the orders of Tahsildar, Yacharam Mandal dated 16.02.2009 in File No.A/5024/2006. This Civil Revision Petition has been filed under Section 91 of Act, 1950 questioning the above referred order of the Joint Collector, dated 17.11.2011.

2. Before adverting to the grounds on which this revision is preferred, it is just and necessary to give a brief note of the order of Tahsildar, Yacharam dated 16.02.2009, impugned Order dated 17.01.2011 and the circumstances which lead the petitioners to file the present revision.

3. As could be seen from the material documents filed along with the revision, it shows that the petitioners herein have filed an application before Tahsildar, Yacharam and claimed that

petitioner Nos.1 to 6 herein, respondent No.8, Makkan Bikshapathi, Makkan Krishnaiah, Makkan, Maddi Salamma, Maddi Buggaraju were the legal representatives of Makkan Jangaiah and Maddi Jangaiah were the original protected tenants of agricultural lands bearing No.Sy.Nos.50 and 51 admeasuring Ac.14-20 guntas and Ac.19.39 guntas respectively, locally known as Chandramma Chelka, Kurmidda Village of Yacharam Mandal and said Jangaiah died leaving the petitioners Nos.1 to 4 herein, David Raju, respondent No.8, Bishapathi, Krishnaiah and the said Maddi Jangaiah died leaving the petitioner Nos.5,6, Salamma, Bugga Raju as their legal heirs and since the above said Makkan Jangaiah and Maddi Jangaiah died they are entitled to obtain succession certificate.

4. They have also sought for restoration of possession over the above said lands. The record shows that before they filed the above referred original suit, the successors of Maddi Jangaiaha have filed O.S.No.305 of 2006, and successors of Makkan Jangaiah have filed O.S.No.306 of 2006 before Junior Civil Judge, Imrahimpatnam for grant of succession certificate. Both the suits were decreed in their favour.

5. The Tahsildar having considered the representation made by the above said petitioners and after perusing the entire record

and decrees referred above, came to the conclusion that the petitioners referred above are legal heirs of original protected tenants by name Maddi Jangaiah and Makkan Jangaiah as such they are entitled to succession of PT rights over the lands to an extent of Ac.14.20 guntas in Sy.No.50 and Ac.19.39 guntas in Sy.No.51 of Kurmidda Village. Accordingly, passed the proceedings on 16.02.2009.

6. Being aggrieved by the said order, respondent Nos.1 to 7 of the present revision petition have filed an appeal under Section 90 of the Act 1950 against the above referred order of Tahsildar, Yacharam in File No.F2/3950/2009. Both the parties have appeared before the Joint Collector, Rangareddy District and submitted their respective contentions. After hearing both parties, the Joint Collector, Rangareddy District passed order dated 17.01.2011 which is impugned in the present revision petition by observing that the petitioners herein are not entitled to succession of protected tenancy rights and set aside the order of Tahsildar, Yacharam dated 16.02.2009.

7. As could be seen from the impugned Order, the District Collector, based on the entries in Khasra pahani (1954-55) found that the land in Sy.No.50 to an extent of Ac.14.20 guntas and Sy.No.51 to an extent of Ac.19.39 guntas which is classified as

patta land was shown in favour of Bakaram Narsi Reddy, Mohd. Ghouse Goiuddin, Abdul Qayyum and found Makkam Janga and Maddi Janga were shown as protected tenants of the said two extents. The Joint Collector has also found that even though the appellants before him have claimed that there was surrender of protected tenancy, the same cannot be accepted in the light of the entries in the Khasra pahani referred above. The Joint Collector having perused the subsequent pahanies, details of which were extracted in the order, further held that the Makkan Jangaiah and Maddi Jangaiah were protected tenants of the above stated lands. They have been given protected tenancy certificate for the said land. In view of Section 40 of Act, 1950 which declare that all the rights of protected tenants are heritable, and if a protected tenant dies, his heir/heirs shall be entitled to hold the tenancy on the same terms and conditions on which such protected tenant was holding the land at the time of death of original protected tenant and such heirs may, notwithstanding anything contained in the Act subdivide inter-se according to their shares the land comprised in the tenancy. Whereas Section 40 (3) provides that in case of death of protected tenant without any such legal heirs all his rights shall be extinguished. However, in the present case since the above

referred petitioners being legal representatives of original protected tenants are entitled to succeed the tenancy rights.

8. The Joint Collector further observed that in the present case the 1st requirement of Section 40 of Act, 1950 was satisfied, but the petitioners herein were not able to show as to when the original protected tenant died. No sufficient proof has been filed, thereby it is difficult to determine whether the protected tenancy was subsisting at the time of death of original protected tenants. He has also observed that the entries in pahanies reveal the name of original protected tenants from 1970 to 1971. The Decrees in O.S.Nos.305 and 306 of 2006 declared the above referred petitioners as legal heirs of Makkan Jangaiah and Maddi Jangaiah. Having observed the same, the Joint Collector has further held that the powers of Mandal Revenue Officer to recognize succession to protected tenancy has to be exercised within a reasonable time.

9. The Joint Collector has observed that Mandal Revenue Officer cannot exercise such powers if the application is not filed within a reasonable time. The impugned Order clearly shows that the Joint Collector while allowing the appeal filed by the respondent Nos.1 to 7 herein was of the opinion that even though there is no prescribed time for filing application under

Section 70 of Act 1950, he has borrowed a similar provision from Section 4 of A.P. Rights in Land and Pattedar Pass book Act, 1971 where it is provided that such an application shall be filed within (90) days from the date of acquisition and as the above referred application was filed by the above referred petitions was not within (90) days period, Tahsildar, Yacharam could not have ordered succession. As such, set aside the order.

10. Being aggrieved by the said Order the petitioners have filed the present revision on the following grounds:

The Joint Collector has misrepresented the provisions of Section 40 of Act, 1950 in respect of limitation by adopting Section 4 of Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971. The Joint Collector committed an error in recognizing the authority of the Tahsildar under Section 40 of Act, 1950. The Joint Collector ought to have considered that the Judgment and Decree of the Junior Civil Judge, Imrahimpatnam in O.S.No.306 of 2006 and declaring the petitioners as legal heirs of original protected tenant. The Joint Collector even though made an observation that there is no dispute that Makkan Jangaiah and Maddi Jangaiah are the protected tenants of the above referred lands, could not have observed and also by observing that the names of protected tenants are reflected in the

revenue records up to 1970-71, could not have set aside the order of Tahsildar, merely on the ground of delay in filing petition under Section 40 of Act, 1950. The Joint Collector committed an error by observing that there was no evidence that protected tenancy was subsisting as on the date of the orders of Tahsildar. In fact, he himself made an observation that Makkan Jangaiah and Maddi Jangaiah were protected tenants and they have not surrendered the protected tenancy rights to the original owners or pattedars, but strangely interfered with the order by making an observation that the protected tenancy was not subsisting and the application filed by the petitioners was not within time, thereby sought for setting aside the impugned order.

11. Heard both parties.

12. Learned counsel for the petitioners has argued that even as per the impugned order it is very clear that the said Makkan Jangaiah and Maddi Jangaiah are the protected tenants of the above referred lands. The certified copies of decrees filed by the petitioners herein proved that the petitioners were declared as the legal representatives of the said Makkan Jangaiah and Maddi Jangaiah. The respondents could not place any material to prove that the original protected tenant surrendered the protected tenancy rights. The application filed before Tahsildar was

properly considered by Tahsildar. But, the Joint Collector without proper appreciation of entire material and only by borrowing the unconcerned provisions he has set aside the order of Tahsildar thereby sought for setting aside the impugned order, and for restoration of the order passed by Tahsildar.

13. The learned counsel for the petitioner placed reliance on some citations/judgments which will be discussed in the following paragraphs of the order.

14. Whereas learned counsel for the respondents has supported the order passed by Joint Collector and submitted that the proceedings issued by Tahsildar were without any notice and information to the respondents. The Tahsildar failed to consider the limitation while issuing proceedings dated 16.02.2009. but, the Joint Collector having examined the entire record and having come to the conclusion that the petitioners could not file application as required under Section 40 of Act, 1950 rightly set aside the order of Tahsildar. Therefore, there is no necessity to interfere with the said order and sought for dismissal of the present revision petition.

15. As could be seen from the impugned order it appears that the respondents herein have filed written arguments and

submitted that the petitioners while filing O.S.No.305 of 2006 and 306 of 2006 have shown them as defendants in the said suit, but while filing the application under Section 40 of the Act, 1950 they did not add them as respondents and claimed that the petitioners herein were not able to show as to when and by whom they were dispossessed. The application filed by the petitioners herein was about more than 100 years.

16. The petitioners have claimed that they were able to prove the protected tenancy Rights of the Makkan Jangaiah and Maddi Jangaiah and also proved that the said protected tenants have cultivated the land in Sy.Nos.50 and 51 during their life time.

17. As could be seen from the impugned order, the Joint Collector has made an observation that Khasra pahani for 1954-55 shows the name of Bakarm Narsing Rao and (3) others as pattedars of Sy.No.50 to an extent Ac.14-20 guntas and Sy.No.51 to an extent of Ac.19-35 gutnas and that the above referred Makkan Jangaiah and Maddi Jangaiah were recorded as protected tenants of the said land. Therefore, the contention of the petitioners that the said Makkan Jangaiah and Maddi Jangaiah were protected tenants of the above said lands has been established.

18. When the said two persons were shown as protected tenants in view of Section 40 of the Act, 1950 it is quite clear that all the rights of protected tenants are heritable. Whereas according to Section 40 (2) provides that in case of death of protected tenants his/her legal representatives shall be entitled to hold the tenancy rights.

19. The Joint Collector while making an observation that in order to get the succession under Section 40 of Act, 1950 the person who sought such relief, shall satisfy that there was protected tenant in the land, his name should be recorded in the final records such as Protected Tenancy should exist at the time of demise of protected tenant and that the claimants shall be legitimate lenient descendents.

20. But, in the present case, the Joint Collector while allowing the appeal filed by the respondents, held that there was protected tenants in respect of above said lands, name of protected tenants were recorded in the relevant records. The documents filed by the petitioners clearly show that they were declared as legal heirs of the deceased protected tenants. Though Joint Collector held that the said protected tenant was not subsisting, absolutely there is no record to conclude that the said protected tenants have surrendered the PT rights. If really

such surrender had happened, the respondents could have placed enough record in support of the said surrender.

21. The findings of the Joint Collector that there is no material as to the exact date of death of protected tenants, cannot be taken into consideration for dismissing the request of the petitioners. As per the impugned order of the Joint Collector, he has categorically made an observation that the petitioners have satisfied the 1st requirement of Section 40 (1) of the Act, 1950 there is no dispute that the above Makkan Jangaiah and Maddi Jangaiah were protected sons of the lands in Sy.Nos.50 and 51. He has also observed that they have been given protected tenancy certificate. However, according to Joint Collector the petitioner could not satisfy Section 40 (2) of the Act, 1950, since they have not placed any record about the exact date of the death of Makkan Jangaiah and Maddi Jangaiah.

22. However, when the respondents were not able to prove that the original protected tenants have surrendered the protected tenancy right, it cannot be said that there is no existing protected tenancy over the above said lands.

23. The next ground on which the appeal was allowed is about the limitation. No doubt Section 40 of the above said Act,

declares that protected tenancy is heritable and enables Mandal Revenue Officer to take cognizance of inherited rights and incorporate the same in the revenue records, such power to recognize succession to protected tenancy has to be exercised within reasonable time and in spite of making a clear objection, that there is no limitation provided, the Joint Collector considered Section 4 of Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, the Joint Collector was of the opinion that such an application shall be filed within 90 days and as the petitioners did not file application in 90 days and there was delay, he has set aside the order of Tahsildar on the only ground.

24. However, learned counsel for the petitioners while placing reliance on judgment between ***Ishar Singh vs Financial Commissioner & Others***¹ has argued that when no limitation period is prescribed in an Act and limitation is inapplicable to such proceedings, limitation provisions of a different act cannot be made applicable in absence of any legal basis. In the above referred judgment, the Hon'ble Apex Court was pleased to observe that when no period of limitation would apply to the filing of an application under Section 43 of Tenancy Act, 1955,

¹ 1984 4 SCC 17

since no such period is prescribed by that act and the limitation act has no application to proceedings under the ... Tenancy Act.

25. The learned counsel has also relied on another judgment between ***Rattan Chand and Others vs Mori (dead) by LRs and Others***² whereunder it was observed that with regard to mutation in revenue records, abrupt non-explained subsequent entries, where someone is registered and shown as occupancy tenant, if someone else's name is entered as non-occupancy tenant without any explanation, first entry should be preferred and not unexplained subsequent entry.

26. He has also placed reliance on a judgment of full bench in ***Sada vs Tahsildar, Utnoor, Adilabad District and Others***³ wherein it was held that for the vesting of the ownership of land, held by a protected tenant under Section 38 (e)(1), it is not necessary that the protected tenant should have been in physical possession on the date of notification under Section 38 (e)(1) on 01.01.1973. It is sufficient if he continues to hold the status of a protected tenant as on notified date, even if not in physical possession and he satisfied the requirements of Section 38 (7) of the Act.

² 2010 11 SCC 768

³ 1987 (2) ALT 749 F.B.

27. Learned counsel has also relied on judgment between ***Thota Sridhar Reddy and other vs. Mandala Ramulamma and other***⁴ for the proposition that once protected tenants are deemed to be owners, there cannot be any occupancy right certificate as purchasers were divested of their ownership by virtue of grant of ownership certificate under Section 38 (e) of the Tenancy Act, and title of the protected tenant is complete and ownership unambiguously vested with them.

28. Therefore, the proceedings of the Tahsildar as well as Joint Collector which are impugned in the present revision petition clearly indicates that there is no dispute that the petitioners are the successors/legal representatives of Makkan Jangaiah and Maddi Jangaiah who were recorded as protected tenants of the lands in Sy.Nos.50 and 51. There is no proof before the Joint Collector to accept that the said protected tenancy was surrendered or seized to be in existence. The observation made by the Joint Collector that the petition filed by the petitioner under Section 32 was not within time as per Section 4 of Andhra Pradesh Rights in Land and Pattadar Pass Books Act, and Revenue Records Act, cannot be accepted in view of the judgment relied on by the petitioners herein. Therefore, the Joint

⁴ 2022 1 J.C.R.165

Collector could not have set aside the order of the Tahsildar which was in accordance with the procedure. Thereby, the impugned order is liable to be set aside and the petitioners are entitled to the relief as observed by the Tahsildar, Yacharam Mandal. Therefore, the revision is liable to be allowed.

29. **In the result**, the Civil Revision Petition is allowed. The impugned order of Joint Collector, Ranga Reddy District dated 17.01.2011 is set aside and order of Tahsildar, Yacharam Mandal, Ranga Reddy District, dated 16.02.2009 is restored.

As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date:16.02.2024
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