*** THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

\+ **Civil Revision Petition No.2977 OF 2019**

% 10.04.2024

Between:

A. Kondal Yadav and two others

Petitioners

Vs.

B. Chittamma and others

Respondents

! Counsel for Appellants : Sri S. V. Ramana

^ Counsel for Respondents : M/s. Pramod Singh

<GIST:

> HEAD NOTE:

? Cases referred :

1. 1998 (9) SCC 184
2. 2021 (5) ALD 477 (TS)(DB)
3. AIR 1988 Andhra Pradesh 77
4. (2016) 15 Supreme Court Cases 102
5. (1998) 9 Supreme Court Cases 183
6. (2010) 1 Supreme Court Cases 756
7. 2021 (11) Scale 796
8. Civil Appeal No. 1609 OF 2022 (arising out of SLP (C) No. 6516/2019) decided on 23.02.2022
9. 2000(3)ALT687
10. AIR 2006 SC 3691
11. W.P.No.11243 of 1988 of High Court of Andhra Pradesh decided on 23.08.1989

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

Civil Revision Petition No.2977 OF 2019

ORDER:

Aggrieved by the order dated 18.10.2019 in Case No.B2/1613/1995 passed by the Joint Collector, Hyderabad District confirming the earlier orders passed by the Joint Collector dated 17.08.1996, the petitioners/appellants filed the present Civil Revision Petition to set aside the impugned order.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the Joint Collector.

3. The brief facts of the case as can be seen from the record available before the Court that necessitated the revision petitioners to file the present Civil Revision Petition are as under:

a) The petitioners' grandfather late Mallesha purchased wet land admeasuring Ac.3.33 guntas in Sy.Nos.62, 63 and 64 of Thokatta Village from its owner and pattedar late B.V. Prakash Reddy and accordingly an agreement of sale was also entered into with him on 24.11.1960. The said agreement was entered into after Mr. B. Sathaiah and others, who were previously cultivating the suit schedule land as protected tenants declined

the offer made by the pattedar to sell the said land to them and had vacated the said land voluntarily on 28.11.1960. The said surrender or decline of the offer made by the pattedar was entered in the pahani for the year 1960-61 denoting abandonment of their tenancy rights over the land in question by Sri B. Sathaiah and two others. The protected tenants surrendered their rights before the Tahsildar, Hyderabad West and the same was accepted by the Tahsildar.

b) As per the provisions of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, permissions under Section 47 of the Act was mandatory for alienation of land. The pattedar of the land B. V. Prakash Reddy made an application to the Tahsildar under Section 47 of the Act for the sale of the said land to Tahsildar, Hyderabad West in File No.A3/9134/62 claiming that there were no protected tenant as by that time the protected tenants had already abandoned their tenancy and abandoned the possession over the schedule land and late Mallesha was already inducted in possession. The said B. Sathaiah and his other partners also filed a petition before the Tahsildar West Hyderabad under Section 19 of the Act and the same was acknowledged by Tahsildar. In response to the said application under Section 47 of the Act issued a letter dated

16.05.1994 calling upon the said land holder Sri B.V. Prakash Reddy to furnish further details which authenticate that the process of obtaining prior permission under Section 47 of the Act was in motion and the sale deed was executed on 12.11.1964 by the land holder Sri B.V. Prakash Reddy and registered as document No.1789 of 1964 in favour of Alluri Mallesham and Alluri Parvathalu residents of Chinna Thokatta Village. Ever since 1960, the said Alluri Mallesham was in possession over the said lands and his name is reflected in the revenue records right from 1960 and he was asserting his right and after five years of his death, his legal heirs i.e., the petitioners and other respondents are in possession and cultivating the same.

c) The landlord Sri B.V. Prakash Reddy died and the alleged protected tenants also died on 11.06.1981. The so called protected tenants never made any claim over the land in question from 1960 till their death as they were aware that they had no right over the land in question. It was only in late 1985, the respondent Nos.24 to 26 claiming to be the legal heirs of one of the ex-protected tenant late B. Sathaiah filed a petition before the Tahsildar, Secunderabad under Section 32 of the Tenancy Act and the same is pending for recovery of possession on the

ground that they were the legal heirs of the deceased tenant B. Sathaiah. Respondent No.4 appeared before the Tahsildar and contested the matter and during the pendency of the said proceedings, for the first time respondent Nos.1 to 3 the alleged LRs of the alleged tenant produced a copy of ownership certificate alleged to have been issued under Section 38-E of the Act dated 01.02.1995 issued in the name of B. Sathaiah who admittedly died on 11.06.1981 changing their claim for recovery of possession to one on the basis of ownership instead of tenancy.

d) An appeal was preferred by the Respondent No.4 challenging the issuance of the certificate in favour of dead person without any proceedings and proceedings mentioned above before the Joint Collector, Hyderabad in File No.B2/1613/1995 which was dismissed vide order dated 17.08.1996 and challenging the same CRP No.3349 of 1996 was filed. A Writ Petition vide W.P.No.19946 of 1996 was also preferred challenging the proceedings of the Additional Revenue Divisional Officer, Hyderabad in issuing the provisional and final list of tenants in File No.LRW/B2/1975 dated 01.02.1995 and the order in appeal before the Joint Collector, Hyderabad in file No. B2/1613/95, dated 19.08.1996. The Writ Petition and

CRP were disposed of remanding the matter back to the appellate authority to decide afresh and the writ petitioner and the appellants were given liberty to raise all the grounds that arise in the writ petition and the CRP.

e) The petitioners got themselves impleaded in the proceedings before the Court in the Writ Petition and also CRP mentioned above as the suit for partition against the respondent No.4 and his legal heirs was decreed in O.S.No.3 of 2002 on the file of learned I Additional Chief Judge, Secunderabad and the same is subject matter of an appeal before this Court. Upon remand, the appellate authority after formally hearing all the parties dismissed the appeal without following the guidelines issued by the High Court while remanding the matter.

4. Heard both sides and perused the record including the grounds of revision.

5. The learned counsel for the revision petitioners contended that the Joint Collector failed to see that the High Court remanded the matter to and permitted agitation of all objections by the appellants and in fact W.P. No.19946 of 1996 was filed challenging not only the ownership certified issued in favour of dead person but also the proceedings which culminated in

preparing of the preliminary and final list of tenants by the Revenue Divisional Officer, Hyderabad. It is further contended that the trial Court committed gross irregularity in not adverting to the grounds challenging the issuance of ownership rights in the preparation of final list of tenants when the tenant concerned already surrendered his tenancy and also abandoned the tenancy in terms of Section 19 of the Act.

6. The learned counsel for the revision petitioners contended that the Court below failed to appreciate the contentions that the registered sale deed was executed after taking permission of the Tahsildar under Sections 47 and 48 of the Hyderabad Tenancy Act, 1950 on the other hand held that the appellants had suppressed the rejection of the petition in proceedings No.B2/419/90 dated 20.05.1991; the proceedings from the grievance of the appellants against the authorities for not tracing out the files in which the protected tenant had surrendered his tenancy and the permission proceedings in A3/9134/1964, the order of the then Joint Collector was to the effect that the proceedings before the Mandal Revenue Officer, Secunderabad cannot be stayed on account of the files not being traced and there was no finding that the proceedings claimed by the appellants were non existent and the finding that

the contention of the appellants that the protected tenants surrendered their tenancy was covered by the said proceedings is untenable and refusal to go into the question of whether the presumption ought to have been drawn is total irregular and failure to exercise jurisdiction vested in him.

7. The learned Joint Collector in the impugned order observed that the appellant No.1 during the cross examination in Case No.D/3460/1983 filed for recovery of possession pleaded ignorance about the sanction of permission granted under Section 47 and 48 of the Act for alienation of the land by the Tahsildar. On this finding, the learned counsel for the revision petitioners contended that the court below failed to see that the respondent No.4 is an illiterate and the question put to him cannot itself be taken into consideration, especially when documentary evidence has been adduced and the same is under consideration by the Tahsildar in different proceedings. Merely because a witness is an illiterate, the evidence or admission made by such witness cannot be brushed aside altogether. Even otherwise, if at all the landholder has obtained prior permission then such permission ought to have been mentioned in the sale deed executed by him in favour of grandfather of revision petitioners. In fact, the sale deed dated 12.11.1964

does not disclose that the landholder has obtained such permission from Tahsildar as required under Sections 47 and 48 of the Act.

8. The learned counsel for the revision petitioners contended that the Court below failed to see the judgment of the Honourable Supreme Court[1] that delay in making an application for restoration of possession under Section 32 disentitles invoking the provision and in support of said contention relied upon a decision in **Vorla Ramachandra Reddy and another v. Joint Collector – I, R.R. District, Hyderabad and others**[2] wherein this Court observed as under:

> *"30. This Court is therefore of the considered opinion that such an application filed by the appellants/petitioners could not have been entertained unless and until the date or period of dispossession was disclosed in clear terms for the authorities to understand the date on which the cause of action had first accrued in their favour. Though there is no exact time mentioned by the appellants/petitioners as to when were they dispossessed, even going by the admitted facts, as stated in the writ affidavit that the tenants viz. Vorla Ramachandra Reddy had expired in 1979 and Dudigalla Mallaiah in the year 1975, there is clearly an inordinate and unexplained delay of more than two decades in filing an application under Section 32 of the Tenancy Act, in the year 2001. The protected tenants have slept over their rights for over two decades and having acquiesced to the change of ownership of the land from the original landlords to Chindham Durgaiah and Doddi Komaraiah in the year 1952 and to the transfer of title to the subsequent purchasers from time to time and later, to the conversion of the land into plots from the year 1982 onwards, the appellants/petitioners cannot be permitted to take undue advantage of the beneficial provisions of the Tenancy Act.*
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> *31. In view of the law laid down by the Supreme Court, as discussed above, it is held that the application filed by the*

[1] 1998 (9) SCC 184
[2] 2021 (5) ALD 477 (TS)(DB)

> *appellants/petitioners for restoration under Section 32 of the Tenancy Act, was far beyond reasonable time and lacked bonafides. Thus, the order impugned, upholding the order passed by the Joint Collector, does not warrant any interference. The writ appeal is devoid of merits and is hereby dismissed along with the pending miscellaneous petitions, if any with no order as to costs."*

9. On the other hand the learned counsel for the respondents relied upon a decision in **Sada and etc., v. The Tahsildar, Utnoor, Adilabad District and another**[3] the High Court for the erstwhile State of Andhra Pradesh held as under:

> *"29. It is clear from 5. 38-E that it is for these 'Protected tenants' who are finally declared to be 'protected tenants' and included in the Register prepared for that purpose and for whom protected tenancy certificates have been issued, that ownership rights are envisaged in S. 38-E(1), subject of course, to the limitation with regard to extent of holdings as specified in S. 38(7) and to the proviso to S. 38-E(1). Once persons who held land on the dates or for the periods mentioned in Ss. 34,37 and 37-A and the requirement of physical possession on the dates required in those sections is satisfied, such persons have become 'protected tenants'. Once a person becomes a protected tenant, he earns a qualification to become an owner by force of statute, subject of course to the qualification regarding extent in S. 38(7) and to the proviso to S.38-E(1). There is no requirement in the Act that he should also be in possession on the date specified in the notification issued in S. 38-E(1). The words 'all lands held by protected tenants' is more a description or the lands with regard to which the right as .protected tenant has been declared and there are no words requiring physical possession on the date specified in the notification."*

10. The learned counsel for the respondents further relied upon a decision in **B. Bal Reddy v. Teegala Narayana Reddy and others**[4] wherein the Apex Court held as under:

> *"12. It is well settled that the interest of a Protected Tenant continues to be operative and subsisting so long as 'protected tenancy' is not validly terminated. Even if such Protected Tenant has lost possession of the land in question, that by itself does not terminate the 'protected tenancy'. The observations of the Full Bench of Andhra Pradesh High Court in Sada's case (supra) which were quoted with approval by this*

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[3] AIR 1988 Andhra Pradesh 77
[4] (2016) 15 Supreme Court Cases 102

> *Court in Boddam Narsimha v. Hasan Ali Khan are quite eloquent."*

11. The learned counsel for the respondents relied upon a decision in **Ponnala Narsing Rao v. Nallolla Pantaiah and others**[5] wherein the Honourable Supreme Court held as under:

> *"2. So far as the first contention is concerned, it must be noted that only documentary evidence was produced before the authorities below on the basis of which judgments were rendered against the petitioner by the lower appellate court as well as by the High Court. The theory of "oral surrender" has been disbelieved by the appellate court by relying on evidence in the shape of entry in tenancy register which shows that the respondents' predecessor was a protected tenant all throughout and that entry was never changed. So far as the petitioner is concerned, he relied upon a khasra entry which shows that in 1954 he was put in possession as an owner of this land and there was an endorsement that in prior years he was in possession since three years. In which capacity was he in possession prior to 1954 is a question which could have been examined only in the light of the petitioner's own evidence on oath. He did not think it fit to enter the box to prove that case. Under these circumstances it was rightly held by the lower appellate court and as confirmed by the High Court that the theory of oral surrender of protected tenancy rights prior to 1954 cannot be believed. The first contention, therefore, fails."*

12. In the case on hand, as seen from the record, as on the date of alleged agreement of sale executed by the landholder in favour of grandfather of the revision petitioners, it was a mere oral surrender even as per the contention of the revision petitioners. In view of the principle laid down above, the theory of oral surrender is disbelieved.

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[5] (1998) 9 Supreme Court Cases 183

13. In **Edukanti Kistamma (dead) through LRs and others v. S. Venkatareddy (dead) through LRs and others**[6] the Honourable Supreme Court observed as under:

> *"Thus, from the above, it is evident that respondents even today are not aware as to what is their case exactly and on what basis they claim the relief. The copy of alleged sale deed or agreement to sell has never been produced before any Court or Authority. It becomes well-nigh, impossible to determine as to whether the predecessor-in-interest of the respondents ever purchased the suit property and even if it was so, admittedly, the transaction was void being in contravention of Section 47 of the Act 1950."*

14. In the case on hand, it is the contention of the learned counsel for the revision petitioner that the grandfather of the petitioners offered Mr. B. Sathaiah and others to sell the property however, while refusing the said offered they have voluntarily vacated the said land voluntarily on 28.11.1960 after execution of agreement of sale on 24.011.1960. But the information as to whether the protected tenancy was validly terminated or not is absent. Merely because the protected tenants have lost their possession over the property, it cannot be said that the protected tenancy was terminated. Since the revision petitioners failed to establish that the protected tenancy was validly terminated, the protected tenants have every right to resume their possession by filing petition under Section 32 of the Act.

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[6] (2010) 1 Supreme Court Cases 756

15. In **B. Bal Reddy'**s case (supra), it was observed as under:

> *"10. Section 38-D of the Act prescribes the procedure to be followed when land holder intends to sell the land held by a Protected Tenant. Accordingly the land must first be offered by issuing a notice in writing to the Protected Tenant and it is only when the Protected Tenant does not exercise the right of purchase in accordance with the procedure, that the land holder can sell such land to any other person. The effect of this provision and non-compliance thereof was considered by this Court in Kotaiah v. Property Assn of Baptist Churches (PVT.) LTD and it was laid down:-*
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> > *"(iv) Section 38-D prohibits the landholder from alienating the tenanted land to third parties. If the landholder intends to sell the land, he must give notice in writing of his intention to the protected tenant. The first offer must be (1989) 3 SCC 424 given to the protected tenant. It is only when the protected tenant does not exercise the right to purchase, the landholder could sell the land to third parties. The alienation made in contravention of these provisions has no legal effect."*

16. Even in the case on hand, it is the case of the revision petitioners that the landlord has offered to sell the land to the protected tenants but the said offer was refused. The information as to whether a notice was served on the protected tenants and whether the procedure as envisaged under Section 38-D of the Act was followed or not is not furnished by the revision petitioners. In **Thota Sridhar Reddy and others v. Mandala Ramulamma and others**[7] the Honourable Supreme Court held as under:

> *"32. The purchasers relied upon an oral surrender of tenancy rights in the year 1954 and later by a written document of 5.2.1957. The execution of the document in the year 1957 unequivocally proves the factum of protected tenancy of the respondents herein. Such surrender is contrary to Section 47 of the Tenancy Act prior to its omission by AP Act No. 12 of 1969*

[7] 2021 (11) Scale 796

and in contravention of Section 38-E(5) read with Section 19(1)(a) of the Tenancy Act.

33. A protected tenant is entitled to recover possession in terms of Section 36 as well as Section 44 of the Tenancy Act which prohibits the termination of protected tenancy. The proviso to sub-section (1) of Section 44 of the Tenancy Act puts complete embargo on a land holder to exercise the right of resumption unless he has within a period of eighteen months from the commencement of the said Act sought reservation of land to exercise his right or resumption in terms of the commencement of Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1955. The Deputy Collector in terms of the said provision had to make a necessary enquiry and issue a certificate that the land has been so reserved. Thus, the land holder had no right to terminate the tenancy after the commencement of Amending Act, 1955 except after an enquiry which was to be conducted by the Deputy Collector. No such reservation had been made nor any enquiry was conducted, therefore, the rights of protected tenant cannot be defeated.

34. The purchasers have relied upon the oral surrender of protected tenancy in the year 1954. Such surrender of oral tenancy of a protected tenant is not permissible under the Tenancy Act except in the manner which is prescribed under Section 38-E (5) read with Section 19 of the Tenancy Act. Still further, the protected tenant has a right to seek possession in terms of Section 36 of the Tenancy Act. Even in terms of Section 38-D, if the land holder intends to sell the land which is in possession of a protected tenant, he has to give a notice in writing of his intention to such protected tenant.

35. Section 38-E contemplates that on grant of certificate of ownership under Section 38-E, the protected tenants shall be deemed to be the full owners of such land. Further, explanation provided under Section 38-E(1) provides that if a protected tenant has been dispossessed otherwise than in the manner and by the order of the Tahsildar as provided in Section 32, then notwithstanding any judgment, decree or order of any Court, or the order of the Board of Revenue or Tribunal shall be deemed to be holding the land on the date of notification. The Tahsildar is under an obligation to either suo motu or in furtherance of an application by the protected tenant, to hold a summary enquiry and direct taking of land in possession of the land holder or any other person claiming through or under him. The possession from a protected tenant can be taken only if the surrender of tenancy is approved by the Revenue Divisional Officer. The land owner is liable to restore possession in terms of Section 46 of the Act if he has failed to cultivate the land personally within one year. Therefore, there is an embargo on the surrender of tenancy rights by protected tenant and even if the tenancy is terminated, the land holder is personally liable to restore possession to the

tenant, if he fails to cultivate the land within one year of termination of tenancy.

36. Once a certificate of ownership is granted which is required to be published in the Government Gazette, the land stands transferred and vested in the protected tenant as a full owner of such land. Such certificate is final subject to the rights of the landowner under the Tenancy Act which is only to seek compensation."

17. The learned counsel for the revision petitioners contended that the Joint Collector ought to have held that late B. Sathaiah lost his rights when he did not avail the options to purchase, but expressed his willingness for sale to the grandfather of the petitioners and he abandoned tenancy. In support of their contention, the revision petitioners relied upon a true copy of petition alleged to have been filed by protected tenants on 25.07.1961. It is to be seen that the present petition is filed under Article 227 of the Constitution of India. In **M/s. Puri Investments v. M/s. Young Friends And Company & others**[8] the Apex Court observed as under:

"13. There was no perversity in the order of the Appellate Tribunal on the basis of which the High Court could have interfered. In our view, the High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application under Article 227 of the Constitution of India. This is impermissible. The finding of the High Court that the appellate forum's decision was perverse and the manner in which such finding was arrived at was itself perverse."

18. In view of the principle laid down in the above said decision, this Court is of the considered opinion that the trial

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[8] Civil Appeal No. 1609 OF 2022 (arising out of SLP (C) No. 6516/2019) decided on 23.02.2022

Court has exercised its discretionary power and in such circumstances, this Court cannot interfere with the findings of the trial Court by exercising the power under Article 227 of the Constitution of India. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether trial Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision. It is to be seen that the above mentioned document, which is stated to be pertaining to 25.07.1961, was not filed before the trial Court or before the first appellate Court for the reasons best known to them. Even otherwise, if we consider the said document, it can be seen that the landlord of the property V.B. Prakash Reddy alleged to have executed agreement of sale on 24.11.1960 and whereas the protected tenant was alleged to have voluntarily vacated on 28.11.1960. Thus, it can be said that the agreement of sale on 24.11.1960

based on which the revision petitioners herein are claiming their rights over the disputed property is prior to 25.07.1961 i.e., the date of protected tenant voluntarily vacating the disputed property as per the document produced by the revision petitioners in this case. Thus, the agreement of sale during the pendency of protected tenancy or the subsequent sale deed in favour of the grandfather of the revision petitioners in respect of disputed property will not sustain. Even as per the pahani for the year 1960-61 relied upon by the revision petitioners, it was stated that the previous cultivator entered into compromise with the pattedar, as such, the pattedar sold the said land to Alluri Mallesha i.e., the grandfather of the revision petitioners. As stated supra, the protected tenant alleged to have surrendered his rights over the disputed property on 25.07.1961 and thus, the question of Alluru Mallesh a cultivating the said land since 28.11.1960 also does not arise. On one hand, the revision petitioners contend that the protected tenant voluntarily vacated the property and on the other hand, as per the record, it is revealed that the protected tenant compromised with the landlord. Even as per the document relied upon by the revision petitioners i.e., the alleged petition filed by the protected tenants before the Tahsildar under Section 19 of the Act, there is no whisper about any compromise between protected tenant and

landholder. Thus, there is lot of ambiguity on this aspect. Therefore, the above mentioned documents will not be of any help to the revision petitioners.

19. It is pertinent to note that the landlord B.V. Prakash Reddy filed an application vide No.LRW/82/75, dated 31.05.1975 before the Additional Revenue Divisional Officer, Land Reforms Tribunal, Hyderabad West, seeking time to file objections, wherein B.V. Prakash Reddy denied the existence of protected tenants on the suit lands situated in Thokatta Village and that Tokatta Village comes within cantonment area within municipal area, as such it should be deemed to be non-agricultural land for the purpose of the Act. On one hand, the landlord is contending that the protected tenant/earlier cultivator/B.Sathaiah has surrendered his rights over the disputed land and on the other hand contending that the lands situated in Thokatta Village comes within cantonment area within municipal area, as such it should be deemed to be non-agricultural. Therefore, there are two contradictory versions from the landlord and that is unsustainable.

20. As per the judgment dated 17.08.1996 in B2/1613/1995 the pattedar Sri Prakash Reddy after obtaining permission executed a registered sale deed on 12.11.1964 in favour of

father of the appellant therein. However, as per the version of revision petitioners, the pattedar of the land B. V. Prakash Reddy made an application to the Tahsildar under Section 47 of the Act for the sale of the said land vide File No.A3/9134/62 and the said B. Sathaiah and his other partners also filed a petition before the Tahsildar West Hyderabad under Section 19 of the Act and in response to the said application Tahsildar issued a letter dated 16.05.1994 calling upon the said land holder Sri B.V. Prakash Reddy to furnish further details which authenticate that the process of obtaining prior permission under Section 47 of the Act was in motion and the sale deed was executed on 12.11.1964 by the land holder Sri B.V. Prakash Reddy and registered as document No.1789 of 1964 in favour of Alluri Mallesham and Alluri Parvathalu residents of Chinna Thokatta Village. Thus, even as per the version of the revision petitioners, the land holder B.V. Prakash Reddy filed an application seeking permission to sell the land and permission was not yet accorded. It is to be seen that mere filing an application does not amount to granting of permission for which the application was submitted. In view of restrictions contained in Sections 47 and 48 of the Tenancy Act, if any land is transferred by the land holder without obtaining prior permission from the Tahsildar, such transfers/alienations are

invalid. The Government, through Act 12 of 1969 ("**Tenancy Amendment Act**") amended the Tenancy Act to omit Sections 47 and 48 of Tenancy Act and inserted Section 50B for validation of transfers which took place without following the procedure prescribed under Sections 47 and 48 of the Tenancy Act. Section 50B of the Tenancy Amendment Act empowers the Tahsildar to validate the alienations made on or after June 10, 1950 till the date of the commencement of the Tenancy Amendment Act which date was extended from time to time till March 31, 1972. Under sub-section (2) Section 50B, the Tahsildar shall hold an enquiry and shall issue a certificate declaring the alienation or transfer as valid. Such a certificate shall be of conclusive evidence of such alienation as against the alienor or any person claiming interest under him. This facility of getting alienations validated under Section 50B was afforded to alienees with the obvious intention of giving them an opportunity to get their alienations or transfers validated upto March 31, 1972 although they were invalid for want of previous sanction by the Tahsildar. If the transferee or alienee did not avail himself of this opportunity he would suffer the consequences of the transfer and delivery of possession in his favour remaining invalid and unlawful. After March 31 1972 there is no possibility of validating invalid transactions which

took place preceding the said date. Therefore, the title or right created in favour of alienees get extinguished once and for all after March 31, 1972 if they were not validated before March 31, 1972. In the case on hand, it is not the case of the revision petitioners that their grandfather or the land holder took aid of Section 50-B of the Act to validate their unlawful alienation.

21. The High Court for the erstwhile State Andhra Pradesh in **Modem Rajamouli v. Modem Roshaiah and Others**[9], while considering the validity of sale without obtaining prior permission of the Tahsildar under Sections 47 and 48 of the Tenancy Act held that a transfer without obtaining the prior permission of the Tahsildar is invalid and that if the invalidity of alienation is not cured before the specified time under Section 50-B of the Tenancy Act, the transfer and delivery of possession is invalid and unlawful and such transfer could not be granted the protection available under Section 53-A of the Transfer of Property Act, 1882. This view was reiterated by the Honourable Supreme Court in ***N Srinivas Rao v. Special Court under A P Land Grabbing (Prohibition) Act and Others***[10]. Hence, the purchaser of an agricultural land will acquire valid title only if the transferor of the agricultural land has sold the land upon

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[9] 2000(3)ALT687
[10] AIR 2006 SC 3691

obtaining the prior permission from the Tahsildar under Sections 47 and 48 of Tenancy Act prior to the Tenancy Amendment Act and/or same is validated under Section 50B of the Tenancy Amendment Act. In **Maddi Seeta Devi v. Mandal Revenue Officer, Moinabad Mandal, Ranga Reddy District and others**[11] the High Court of Andhra Pradesh observed that failure to obtain permission from Tahsildar under Section 47 renders a transaction void, therefore, the sale deed dated 08.10.1964 by which the third respondent and his two brothers sold the property in favour of Pochamma being void, the same land Pochamma could not convey by a subsequent sale deed, no rights flow under a void transaction.

22. In the case on hand, the land holder has not taken any prior permission from the Tahsildar and moreover he has alienated the land to grandfather of the revision petitioners by entering into agreement of sale before the protected tenant has vacated the property, more particularly in the absence of any written surrender of the land by the protected tenant. Thus, any alienation of the property by the landholder without prior permission from the Tahsildar and without terminating the

[11] W.P.No.11243 of 1988 decided on 23.08.1989

tenancy in a proper procedure, would amount to void transaction.

23. It is the contention of the revision petitioners that ever since 1960, the said Alluri Mallesham was in possession over the said lands and his name is reflected in the revenue records right from 1960 and he was asserting his right and after five years of his death, his legal heirs i.e., the petitioners and other respondents are in possession and cultivating the same. But when the protected tenant alleged to have submitted an application before the Tahsildar on 25.07.1961, the question of Alluri Mallesham being in possession over the said lands since 1960 does not arise.

24. The learned counsel for the revision petitioners contended that the Joint Collector ought to have held that the certificate purported to have been issued consequent to the final list of tenants dated 31.06.1976 as well as the proceeding dated 31.05.1975 of the Additional Revenue Divisional Officer confirming the provisional list were null and void, as the same was issued without notice to late Mallesha, grandfather of the petitioners, who was the purchaser under a registered sale deed dated 12.11.1964 and whose possession and enjoyment is recorded in the village records and from whom land revenue is

being received and a pattedar passbook was also issued. But as stated supra, since the landholder has not obtained prior permission from the Tahsildar, the sale deed on which the revision petitioners placed their reliance, would become null and void. Thus, the above contention of the revision petitioners is unsustainable.

25. The learned counsel for the revision petitioners contended that the Joint Collector committed grave illegality in resuming that till the name of the pattedar is changed in mutation, the rights will be in abeyance, while in fact and law, mutation of name in revenue record does not confer any new right. In fact, the name of Mallesha was recorded as occupant in the pahanies and the want of change of patta is immaterial. There is absolutely no doubt that revenue record does not confer any title or right on any party. It is well established that entries in the revenue records would not confer any right nor would take away any right existing. However, a patta land means a revenue record issued by the local government authority, establishing possession of the property and it is a formal process of recording the property transaction in government land records to transfer ownership rights. If at all the landholder has terminated the tenancy by following due

procedure and obtained prior permission of the Tahsildar to sell the said property, then certainly patta certificate would have been issued in the name of grandfather of the revision petitioners. But in the case on hand, patta was not issued in the name of grandfather of the revision petitioners. A mere entry in the pahani in the name of grandfather of the revision petitioners will not confer any title or possession. Thus, the learned Joint Collector observed in the impugned order that till the name of the pattedar is changed in mutation, the rights will be in abeyance. Hence, the above contention of the revision petitioners is untenable.

26. The learned counsel for the revision petitioners contended that the Joint Collector ought to have held that the certificate dated 01.02.1995 declaring the rights of section 38-E of the Act which was issued in favour of late B. Sathaiah and against B.V. Prakash Reddy, who were already dead is nullity. As seen from the order dated 31.05.1975 in Case No.LRW/82/75 the Additional Revenue Divisional Officer Land Reforms Tribunal, Hyderabad, West the petitions filed by the protected tenants were allowed for grant of ownership certificate u/s.38-E of the Act. Thus, the protected tenants were entitled for ownership certificate as on 31.05.1975 and whereas late B. Sathaiah

expired in the year 1981. Therefore, the protected tenant B. Sathaiah died after he was entitled for ownership certificate under Section 38-E and thereafter, the certificate dated 01.02.1995 declaring the rights of section 38-E of the Act was issued in favour of late B. Sathaiah. In **Thota Sridhar Reddy's** case (supra), the Honourable Apex Court observed as under:

> *"30. This Court in Bal Reddy quoted with approval the Full Bench judgment in Sada as well as the earlier judgment of this Court in Kotaiah to hold that protected tenancy could be terminated only in a manner known to law. In the absence of such valid termination of 'protected tenancy', the interest of such protected tenant continues to be operative and subsisting in law and could devolve on his legal heirs and representatives who could then claim restoration of possession. As laid down in Sada, even if the protected tenant had lost possession, without there being valid termination of his status as a protected tenant, he would still be entitled to all incidents of protection under the Act."*

27. In view of the principle laid down in the above said decision, it can be said that though the protected tenant, who was entitled for ownership certificate as per the orders dated 31.05.1975, died in the year 1981, the interest of such protected tenant continues to be operative and subsisting in law and could devolve on his legal heirs and representatives who could then claim restoration of possession. As seen from the certificate of ownership dated 01.02.1995 it was clearly declared that Bandigari Sathaiah shall be deemed to be the owner of the said land with effect from 01.01.1973 as against the land holder and all other persons having any interest therein. There is no dispute that as on 01.01.1973 Bandigari Sathaiah was

cultivating the land in dispute. There is also no dispute that as on the date of passing the orders dated 31.05.1975 by Additional Revenue Divisional Officer, Hyderabad entitling the protected tenants to have ownership certificate under Section 38-E of the Act, one of the protected tenants by name Bandigari Sathaiah was very much alive. Therefore, the above contention of the learned counsel for the revision petitioners is untenable.

28. The learned counsel for the respondents contended that the revision petitioners have challenged the ownership certificate dated 01.02.1995 and they did not challenge the orders passed by the Additional Revenue Divisional Officer, Hyderabad in File No.LRW/B2/1975 dated 31.05.1975, wherein the protected tenants were entitled for ownership certificate under Section 38-E of the Act. In support of the said contention, they relied upon a decision in **Edukanti Kistamma's case (supra)**, wherein it was observed as under:

> *"It is a settled legal proposition that challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained. Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined."*

29. A perusal of the order dated 17.08.1996 in Case No.B2/1613/95 discloses that the appeal was filed against the ownership certificate issued in file No.B/6074/94, dated

01.02.1995 under Section 38 (E) of the Act. The father of the revision petitioners ought to have challenged the orders passed by the Additional Revenue Divisional Officer, Hyderabad in File No.LRW/B2/1975 dated 31.05.1975 and instead appeal was filed 20 years thereafter challenging the certificate that was issued on 01.02.1995. This inordinate delay of twenty years in not filing the appeal, was not explained by the revision petitioners. In view of the principle laid down in the above said decision, it can be said that the father of the revision petitioners is not entitled to challenge the consequential order (certificate under Section 38-E of the Act) without challenging the basic order (Order dated 31.05.1975 in File No.LRW/B2/1975).

30. In view of the above discussion, this Court is of the opinion that there are several lacunae on the part of the purchasers, who have purchased the property in dispute from the original landholder i.e., there was no proper termination of protected tenancy as per the procedure and the landholder has not obtained any prior permission from the Tahsildar for alienating the property in dispute to the grandfather of the revision petitioners and the appeal filed by the appellants was after 20 years from the date of passing the orders dated 31.05.1975 by the learned Additional Revenue Divisional

Officer, Hyderabad in allowing the petitions for issuance of ownership certificate File No.LRW/B2/1975 dated 01.02.1995 and the appellants instead of challenging the orders dated 31.05.1975 have challenged the ownership certificate that was issued on 01.02.1995.

31. Thus, viewed from any angle there are no grounds to set aside the impugned order, more particularly, when the revision petitioners failed to establish their case. Moreover, as stated supra, until and unless there is any error in the impugned order apparent on the face of the record or when the impugned suffers from any irregularity, this Court cannot interfere with the findings of the learned Tribunal in a Civil Revision Petition filed by invoking Article 227 of the Constitution of India. Therefore the Civil Revision Petition is devoid of merits and liable to be dismissed.

32. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Pending Miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

Date: 10.04.2024

Note: To be marked as LR Copy.
B/o. AS