

Kotaiah and Another

Vs

Property Association of The Baptist Churches (Pvt.) Ltd.

Civil Appeal No. 2098 of 1980

(S. Natarajan, G. L. Oza, K. Jagannatha Shetty JJ)

21.07.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. This appeal with leave arising out of a judgment of the High Court of Andhra Pradesh illustrates how the "land reform" and the progressive policy of "land to the tiller" could be defeated by vested interests and lukewarm attitude of statutory authorities.

2. The relevant facts :

The appellants were in possession of certain agricultural lands as tenants. After coming into force of the A.P.(T.A.) Tenancy and Agricultural Lands Act, 1950 ("the Act"), they were recognised as protected tenants. A "protected tenant" means that he is protected from eviction. If he is dispossessed, the Tehsildar suo moto or on application shall put him in possession. Rev. Rutar Ford Padri and Vundru Padri were admittedly their landlords. The appellants had no problem with them. It seems that they had left the country long long ago. The first respondent claims to be the Property Association of the Baptist Churches (Pvt.) Ltd., ("the Association"). The Association does not dispute that the lands were originally purchased by Rev. Rutar Ford Padri and Vundru Padri but it says that they purchased for the benefit of American Baptist Formation Society. The lands stood transferred to the Association as per order made by the Madras High Court in Company Petition Nos. 109 and 110 of 1973. The Association thus claims to be the owner and also says that it is in de facto possession of the lands.

3. In 1976, the Association issued notice under Section 19 (2) of the Act terminating the appellants' tenancy. In the notice, it was alleged that the appellants were self-styled tenants. They have not paid the rents for more than three decades. They were working off and on as casual labourers. They were being paid for their services. There was no other relationship between them and the Association. It was further alleged that the appellants sub-divided the lands and alienated bit by bit to third parties and thereby denied title of the landholder. They have been, therefore, treated as trespassers.

4. On May 31, 1976, the appellants received the said notice but did not send any reply. Thereafter the Association moved the Tehsildar Jangaon under Sections 19(2) read with 28(10) of the Act seeking symbolic possession of the lands from the appellants. It is interesting to note some of the averments made in that application :

Neither of the above persons had possession during the statutory period under Section 34 of the Tenancy Act to claim protected tenancy over the said lands. The said persons by taking undue advantage of the similarity of the names appearing in the Tenancy Registers with respect to the said lands are asserting fictitious and imaginary rights of protected tenancy in the above lands. It is submitted that without any basis or foundation and are made without any notice to the then landlords and even if it is to assume that the said persons are the protected tenants with respect to the above lands, their so-called rights have been duly and legally terminated under Section 19 of the Tenancy Act by giving them notice for the statutory period of six months which they have received on May 31, 1976 but failed to give reply to it. The termination of the protected tenancy rights is irrevocable and after the expiry of the statutory period from the said date of receipt of the notice, they are not entitled to claim any rights whatsoever much less protected tenancy rights on the above lands.

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In all the above lands the appellant is having his own cultivation for the benefit of the said schools and hostels. Some lands are cultivated by the students themselves under the "cow boy" system. All the above lands are in physical possession of the application herein. But to overcome the legal implications, the applicants are claiming symbolic possession pursuant to termination notice.

5. Before the Tehsildar, the appellants, denied all the above allegations. They did not recognise the Association as their landlord. They asserted that they were protected tenants entitled to remain in possession of the lands.

6. On November 28, 1977, the Tehsildar made an order accepting the contentions of the Association. The Association was held to be the owner of the lands. The appellants were held to have no right since their tenancy was duly terminated.

7. The appellants appealed to the Joint Collector, Warangal, who dismissed the appeal with the following observations :

It is evident from records that the appellants are not in possession of the suit lands whereas the respondent-Association is possessing and enjoying it. The suit land is covered by structures like Mission School, residential quarters, hostels for students, etc., and the rest of the land is in possession and occupation of respondent-Association and some third persons. Since the appellant are adversely out of possession, their right also stands extinguished under Section 27 of the Limitation Act..... Since the facts of non-payment of rents, assignment of interests in the land personally which constitute the grounds for respondent-Association to terminate the tenancy under Section 19 of the Act are proved before the lower court and neither rebutted in this appeal nor the findings of the lower court on these points are challenged, the appeal does not merit any consideration.

8. The appellants then approached the High Court with revision petition under Section 91 of the Act. The High Court did not do anything better except blessing the observations made by the Collector. The High Court observed that the appellants were not cultivating the lands personally. They did not dispute non-payment of rent. Nor denied assignment of interest in the land to third parties. So stating, the revision was dismissed.

9. The contentions :

Counsel for the appellants argued that Rutar Ford Padri and Vundru Padri were the landholders under whom the appellants were protected tenants. That has been so recorded in the final record of agricultural tenancy. That has been so recorded in the final record of agricultural tenancy. The appellants were not parties to the Company Petition Nos. 109 and 110 of 1973 in the High Court of Madras. Nor they had any notice of that proceedings. Since they were protected tenants, the landholders had no right to transfer the lands to the requirement under the Act. The alienation to the Association even if true, was in contravention of the statute and therefore, invalid and unenforceable. The appellants could not pay the rent to Rutar Ford Padri and Vundru Padri because their whereabouts were not known. The Association has adopted illegitimate means to dispossess the appellants by setting students against them. The action of the Association was illegal and an offence punishable under the Act.

10. With these and other contention, it was urged that the possession of lands should be restored to the appellants.

11. Counsel for the Association on the other hand sought to justify the orders under appeal.

12. We heard counsel for the parties. We have carefully perused the material on record.

13. The relevant statutory provisions :

Section 5 of the Act reads :

5. Persons deemed to be tenants. - A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the landholder and if such person is not -

(a) a member of the landholder's family; or

(b) a servant on wages payable in cash or kind, but not in crop share or a hired labourer cultivating the land under the personal supervision of the landholder or any member of the landholder's family; or

(c) a mortgagee in possession.

Provided that if upon an application made by the landholder within one year from the commencement of this Act to the Tehsildar within whose jurisdiction the land is situated -

(a) The Tehsildar declares that such person is not a tenant and his decision is not reversed on appeal or revision, or

(b) The Tehsildar refuses to make such declaration but his decision is reverted on appeal or revision

such person, shall not be a tenant.

14. Section 19 provides for termination of tenancy and so far as material it is as follows :

19. Termination of tenancy. - (2) The landholder may terminate a tenancy on the grounds that the tenant -

(a)(i) has failed to pay in any year, within fifteen days from the day fixed under the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317(F) for the payment of the last instalment of land revenue due for the land concerned in that year, the rent of such land for that year; or..

(b) has done any act which is destructive or permanently injurious to the land; or

(c) has sub-divided the land; or

(d) has sub-let the land or failed to cultivate the land;

(e) personally, or has assigned any interest therein; or

(f) has used such land for a purpose other than agriculture :

Provided that no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this sub-section unless the landholder gives six months' notice in writing intimating his decision to terminate the tenancy and the grounds for such termination.

15. Section 28 provides relief against termination of tenancy for non-payment of rent.

16. Section 32 provides for taking possession of tenanted lands :

32. Procedure of taking possession. - (1) A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply to the Tehsildar in writing in the prescribed form for such possession.

(2) No landholder shall obtain possession of any land or dwelling house held by a tenant except under an order of the Tehsildar, for which he shall apply in the prescribed form.

(3) On receipt of an application under sub-section (1) or sub-section (2), the Tehsildar shall, after holding an enquiry pass such order thereon as he deems fit.

(4) Any person taking possession of any land or dwelling house otherwise than in accordance with the provisions of sub-section (1) or sub-section (2) as the case may be, shall, without prejudice to his liability to the penalty to the penalty provided in Section 96, be liable to forfeiture of the crops, if any, grown on the land to the payment of such costs as may be awarded by the Tehsildar or by the Collector on appeal from the Tehsildar.

17. It will be convenient at this stage to read four other sections, namely, Sections 34, 37, 38-D and 38-E. They are as follows :

Section 34, omitting immaterial words provides :

34. Protected tenants. - (1) A person shall, subject to the provisions of sub-sections (2) and (3) be deemed to be a Protected Tenant in respect of land, if he -

(a) has held such land as a tenant continuously -

(i) for a period of not less than six years, being a period wholly included in the Fasli years 1342 to 1352 (both years inclusive) or

(ii) for a period of not less than six years immediately preceding the 1st day of January, 1948 or

(iii) for a period of not less than six years commencing not earlier than the 1st day of the Fasli year 1353 (October 6, 1943) and completed before the commencement of this Act, and

(b) has cultivated such land personally during such period.

18. Section 37 is in these terms :

37. Persons not entitled under Section 34 deemed in certain circumstances to be protected tenants. - (1) Every person who at the commencement of this Act holds as tenant any land in respect of which no person is deemed to be a protected tenant under Section 34, shall, on the expiration of one year from such commencement or, the final rejection of all claims by any other person to be deemed under Section 34 to be a protected tenant in respect of such land, whichever is later, be deemed to be a protected tenant in respect of such land unless the landholder has before such expiration or final rejection as aforesaid made an application in the prescribed form to the Tehsildar for a declaration that such person is not a protected tenant.

19. Section 38-D reads :

38-D. Procedure when landholder intends to sell land to a protected tenant. - (1) If the landholder at any time intends to sell the land held by the protected tenant, he shall give a notice in writing of his intention to such protected tenant and offer to sell the land to him. In case the protected tenant intends to purchase the land, he shall intimate in writing his readiness to do so within six months, from the date of the receipt of such notice. If there is any dispute about the reasonable price payable by the protected tenant for the land, the provisions of sub-sections (3) to (8) of Section 38 shall apply mutatis mutandis.

(2) If the protected tenant does not exercise the right of purchase in response to the notice given to him by the landholder under sub-section (1) such protected tenant shall forfeit his right of purchase of the same and the landholder shall be entitled to sell such land to any other person. On such a purchase by any other person, the protected tenant shall forfeit all his rights in the land save those provided for in Section 41.

20. Section 38-E provides :

38-E. Ownership of lands held by protected tenants to stand transferred to 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 landholder 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 of his being dispossessed otherwise than in the manner and by order of the Tehsildar as provided in Section 32, is not in possession of the land on the date of the notification issued hereunder, then for the purpose 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 Tehsildar 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 has held the land on the date of such notification.

21. This then is the main structure of the Act.

22. In sum...

(i) The protected tenant has a right to become full owner of the lands in his possession. He becomes the owner when the government issues a notification under Section 38-E. We are told that the government had issued such a notification on October 1, 1973, relating to the district where the lands in question are situated. It was about three years earlier to termination of the appellants' tenancy by the Association. If the appellants had right to become owners of the tenanted lands, the question of terminating their tenancy would not arise.

(ii) The protected tenant cannot be dispossessed illegally by the landlord or anybody else. If so dispossessed, the Tehsildar either suo motu or on application must hold a summary inquiry, and direct that the land be restored to the protected tenant. That is the mandate of Section 38-E and the Explanation thereof.

(iii) The landholder by himself cannot dispossess the protected tenant even if the tenancy is terminated in accordance with the law. The landlord will have to take recourse to Section 32. He must approach the Tehsildar to hold an enquiry and pass

such order as he deems fit.

(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 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.

23. So return to the case. The contention of the Association that it is in de facto possession and entitled to symbolic possession is unavailable and indeed, unacceptable. Firstly, there cannot be any dispute in this case about the protected tenancy rights of the appellants. The revenue documents like Pahanipatrika and final record of agricultural tenancy clearly establish that the appellants were recognised as protected tenants. Secondly, it was not the case of the Association that Rev. Rutar Ford Padri and Vundru Padri first offered the land to the appellants before they transferred the same to the Association. Therefore, in the light of the statutory provisions to which we have called attention, the Association's title cannot be said to be legitimate.

24. Counsel for the Association also appeared to have anticipated this inevitable result. He made an impassioned appeal for leave to withdraw the original petition filed before the Tehsildar. He perhaps wanted to give quietus to these proceedings, leaving the appellants free to agitate their rights elsewhere.

25. But we cannot agree with him. We cannot also accede to his request. The Association cannot be permitted to take advantage of its highhandedness. It is an exploitation of the exploited. It is an oppression of the oppressed. The court cannot countenance it.

26. In the result, we allow the appeals. In reversal of the impugned orders, we direct the Tehsildar to put the appellants in possession of the agricultural lands in question within one month. The appellants however, are not interested in taking possession of their lands covered with buildings of the Association. They want to be fair in spite of their tribulation. The lands covered with the buildings may, therefore, be excluded.

27. The Association must pay the costs of the appellants which we quantify at Rs. 20,000.

28. The Collector is directed to ensure that this order is faithfully complied with by the concerned.

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