SUPREME COURT OF INDIA

State of A.P

Vs.

T. Yadagiri Reddy

C.A.No.6557 of 2002

(Lokeshwar Singh Panta and V.S. Sirpurkar JJ.)

28.11.2008

JUDGMENT

V.S. SIRPURKAR, J.

1. A Judgment by the High Court allowing a Civil Revision Petition, setting aside the order passed by the Land Reforms Appellate Tribunal- cum-II Additional District Judge of Ranga Reddy District (hereinafter called `the Appellate Tribunal' for short) is in challenge before us. The High Court while allowing the Revision, recognized the rights of the respondents herein as the protected tenants and further held that they become absolute owners of the land by purchasing the land in respect of which they were protected tenants. As a sequel, the High Court held that the land held by them could not be declared as a surplus land and could not be distributed as such. Before we approach the disputed questions, a factual background would be necessary.

2. Five respondents, namely, (1) Shri T. Yadagiri Reddy, (2) Shri T. Bal Reddy, (3) Shri T. Janardhan Reddy, (4) Shri T. Mohan Reddy, (5) Shri T. Satyanarayana Reddy are the sons of Late Shri T. Papi Reddy. According to them, the said Late Shri T. Papi Reddy was a protected tenant

from (1) Late Shri Khaja Shakhir Hussain, (2) Shri Khaja Nasir Hussain, (3) Smt. Razia Sultana W/o Mir Sadath Ali. It is the case of the respondents, as seen from their Counter affidavit that at the commencement of A.P. (Telangana Area) Tenancy & Agricultural Lands Act, 1950 (hereinafter called "the Tenancy Act" for short) and more precisely, on 10.6.1950, their father Late Shri T. Papi Reddy was deemed to be the protected tenant of the land, admeasuring 123 Acres 17 guntas, bearing Survey Nos. 18 to 24 (old), i.e., new Survey Nos. 24 to 30 and 39 of Meerpet Revenue Village, Saroornagar Mandal, Rangareddy District, Andhra Pradesh. This land belonged to Late Shri Khaja Shakhir Hussain and others, who were the Jagirdars of that Village. Their father Late Shri Papi Reddy entered into an agreement on 25.2.1956 with Late Shri Khaja Shakhir Hussain and others for transfer of land holders' interest in the said land to the tenants Late Shri T. Papi Reddy himself and the present respondents. The respondents asserted that this was under the provisions of Section 38-A & B of the Tenancy Act. They further pleaded that there was oral partition between Late Shri T. Papi Reddy and his sons, i.e., respondents, in which lands stood divided and that included also the concerned land to the extent of 123 acres 17 guntas, comprising of Survey Nos. 24 to 30 and 39. According to the respondents, the whole land was divided into six equal shares. They then pointed out that on 1.1.1975, A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter called "the Ceiling Act" for short) came on the anvil. Under the provisions of that Act, Late Shri T. Papi Reddy, as also the present respondents filed six separate declarations regarding the land owned and possessed by them and these declarations included the aforementioned Survey numbers also, which were obtained by them in their capacity as the protected tenants. It is the further case of the respondents that a Verification Report in respect of the declarations made by the respondents and Late Shri T. Papi Reddy were verified by the Verification Officer and the same Report was submitted to the Land Reforms Tribunal I-cum-Additional Revenue Divisional Officer (hereinafter called `the Tribunal) of Ranga Reddy District, appointed under the Ceiling Act. This was on 31.7.1975 and 8.8.1975. In between 14.8.1975 and 22.10.1975, six orders came to be passed by the Tribunal. The dates and the other details of these Revenue cases, dealt with by the Land Reforms Tribunal, were as under:-

S.No.	Name of the Declarants	C.C. Reference No.	Date of Order No.	Exhibits
1.	T. Papi Reddy (father)	1006/E/75	27.10.1975	A-12
2.	T. Yadagiri Reddy	439/E/75	14.8.1975	
3.	T. Bal Reddy	440/E/75	14.8.1975	A-8
4.	T. Janardhan Reddy	801/E/75	14.8.1975	A-6
5.	T. Mohan Reddy	1009/E/75	14.8.1975	A-4
6.	T.Satyanarayana Reddy	1143/E/75	14.8.1975	A-5

3. So far so good. The respondents claimed that they continued to be in possession of the lands, since none of them had held more land than the ceiling area prescribed by the Ceiling Act. The orders passed in their case, shown in the Table above were also not appealed against by the State Government and had become final. While the matters in case of the respondents stood thus, a further development took place as follows.

4. On 22.7.1994, an order came to be passed by the Tribunal, purporting to hold the lands in Survey Nos. 24 to 30 and 39 in the holdings of Late Shri Khaja Shakhir Hussain and others (land holders) and it was declared in that order that the land holders therein were surplus holders. The respondents pointed out that this order was completely oblivious of the six orders passed in case of Late Shri T. Papi Reddy and themselves, shown in the Table nor did they (Late Shri T. Papi Reddy and the respondents herein) join as parties to the proceedings. It was further pointed out that on 6.2.1996, a public notice was issued by the Tribunal, Ranga Reddy District, calling for the objections in declaring Survey Nos. 24 to 30 and 39 as the surplus land, as held by Late Shri Khaja Shakhir Hussain and others. However, Late Shri T. Papi Reddy had already expired on 21.11.1975, i.e., barely one month after the order in his case was passed. On 13.2.1996, the respondents filed the objections to the proposal of the said Survey Nos. 24 to 30 and 39, being surrendered as a surplus land.

The Tribunal rejected the objections filed by these respondents by order dated 22.7.1995 (2.3.1996), against which they filed an appeal on 11.8.1997 before the Land Reforms Appellate Tribunal-cum-II Additional District Judge, Ranga Reddy district at Saroornagar, Hyderabad, A.P. By its order dated 9.9.1997, the Appellate Tribunal partly allowed the appeal only to the extent of 33 acres and 12 guntas in the aforementioned Survey Numbers, while the said appeal was rejected in respect of the remaining extent of 90 acres of land. That order was challenged by way of a Civil Revision Petition before the High Court, being Civil Revision Petition No. 4351 of 1997 and the said order was set aside by the High Court by the impugned order. The respondents, therefore, claimed that they were

protected tenants and there was no question of the land comprising of 3 Survey numbers, being declared as surplus and it had long ceased to be the land of Late Shri Khaja Shakhir Hussain and others, and they had become the full owners of that land. In short, they claimed that they had purchased the said land in the capacity of the protected tenants in terms of Section 38 of the Tenancy Act. They further pleaded that if the proceedings under the Ceiling Act concerning them had become final, as such, those orders had become res-judicata against the State. They also pointed out that after the death of their father Shri T. Papi Reddy in the year 1975 and even before that they had partitioned the land and all through, they were treated to be the protected tenants earlier and thereafter, the land holders. They relied on substantial Revenue record in support of their status as the protected tenants, as also the Certificates issued by the Revenue Department under Section 38-E of the Tenancy Act, signifying their exclusive nexus with the land to the exclusion of the original land holder.

5. Before we advert to the arguments of Shri R. Sundaravardan, Learned Senior Counsel appearing for State of Andhra Pradesh and the reply thereto by Shri P. P. Rao, Learned Senior Counsel, appearing for the respondents, it will be better to see the findings given by the Learned Single Judge of the High Court. The High Court, firstly found that the Appellate Tribunal had allowed the appeals to the extent of 33 acres 12 juntas, in respect of which the ownership Certificates were granted under Section 38-E of the Tenancy Act, in support of which the respondents had filed Exhibit A-2. The High Court also found that the Appellate Tribunal had dismissed the appeal in respect of 96 acres 12 guntas on the ground that these lands were covered by Section 38-B of the Tenancy Act. The respondents had filed the Certificates - Exhibit A-1. The High Court noted that the Appellate Tribunal had taken a view that in pursuance of the Agreement dated 22.5.1956; the land holders could not have purchased the lands, as there was no permission under Section 47 and 48 of the Tenancy Act for such sales. However, the High Court proceeded on the ground that the lands were covered under Section 38-B of the Tenancy Act. The question before it was as to whether such lands held by a protected tenant and covered under Section 38-B of the Tenancy Act were liable to be excluded under Section 13 of the Ceiling Act from the ceiling area of the land holder. The High Court then noted that the respondents were never made parties to the Ceiling proceedings in respect of Late Shri Khaja Shakhir Hussain and others made on the basis of the declarations filed in C.C. Nos. 2476, 2477 and 2478 of 1975, in which the lands were shown in their holding. The High Court then took the note of the separate ceiling cases, which had attained the finality by the various orders passed between 27.10.1975 and 14.8.1975, in which it was held that the respondents were entitled to 1/6th share and they were non-surplus holders in respect of the lands held by them as the protected tenants. The High Court noted that those orders had become final. The High Court, therefore, took the note of the fact that in spite of this finality in those cases, these lands were again included in the holding of Late Shri Khaja Shakhir Hussain and one another (the original respondent Nos. 3 & 4 before the High Court) and they were declared to be the surplus holders and further, suo moto proceedings were also initiated in respect of those lands. The High Court found that there was no dispute with the primary fact that the respondents' father Late Shri T. Papi Reddy was the protected tenant in respect of not only those lands in respect of which the Certificates under Section 38-E was issued, but also in respect of the land falling under Section 38-B. The High Court then held that the respondents were not strangers or trespassers, but, were the protected tenants, and as such, their land stood excluded under Section 13 of the Ceiling Act. The High Court extensively dealt with Section 13 of the Ceiling Act, Section 38 of the Tenancy Act and more particularly, sub-Section B thereof and came to the conclusion that a Certificate issued under Section 38-B was on par with the Certificate granted under Section 38-E of the Tenancy Act. It, therefore, concluded that there was no question of applicability of Section 47 and 48 of the Tenancy Act, requiring prior permission. Relying on two reported decisions, the High Court ultimately held that in view of the Certificate having been granted in favour of Late Shri T. Papi Reddy under Section 38-B of the Tenancy Act, the respondents had become the absolute owners, and as such, their land could not be included in the ceiling area of the land holder and could not be put for distribution, treating it to be the surplus land. The Civil Revision was allowed with these observations.

6. Shri R. Sundaravardan, Learned Senior Counsel, appearing on behalf of the appellant State of Andhra Pradesh assailed the judgment, firstly, on the ground that Late Shri T. Papi Reddy, father of the respondents herein, himself could not be a protected tenant and thereby, even the respondents, who were his sons could not have become the protected tenants in law. The Learned Senior Counsel argued that since the very basis of the claim of the respondents is without any substance, the further

claim of the separate possession in their capacity as the protected tenants has no basis. The Learned Senior Counsel for this argument, relied on the plea raised by the respondents that there was an Agreement of Purchase between Late Shri T. Papi Reddy and the Jagirdars (landlords) in respect of 123 acres and 17 guntas of land contained in Survey Nos. 24 to 30 and 39. The Learned Senior Counsel pointed out that ever since the said Agreement was executed, the possession of Late Shri T. Papi Reddy, as also his sons, did not remain that of the protected tenants, and in fact, Late Shri T. Papi Reddy alone became an owner of the said land and in that view, there could not have been also a partition between Late Shri T. Papi Reddy and his sons, as was claimed by the respondents, for the simple reason that the said land did not have the character of a partible estate since the land was tenanted land once upon a time. The Learned Senior Counsel carried his arguments further and suggested that even assuming that the said tenancy continued in favour of Late Shri T. Papi Reddy and after his death, in favour of the respondents, there was nothing on record to suggest that there was any permission obtained under Section 47 by either Late Shri T. Papi Reddy or the respondents for purchasing this land. Lastly, the Learned Senior Counsel contended that even if it is assumed that the status of protected tenant was conferred upon the respondents under the provisions of the Tenancy Act, and further even if there were final orders passed under the Ceiling Act, which remained unchallenged by the Government, it was always open for the Government under Section 50 of the Tenancy Act to reopen the proceedings. The Learned Senior Counsel, therefore, argued that at least excepting Late Shri T. Papi Reddy, whose claim was admitted in respect of the lands covered by the Certificate under Section 38-E, the other lands in possession of the respondents were bound to be declared as surplus lands.

7. As against this, Shri P. P Rao, Learned Senior Counsel, appearing on behalf of the respondents, firstly contended that the orders dated 14.8.1975 and 27.10.1975 passed by the Tribunal had become final and binding on the parties thereto, including the State Government, and since there was no appeal under Section 20(5) of the Ceiling Act, those orders would operate as res-judicata in all the subsequent proceedings. The Learned Senior Counsel pointed out that there was no scope for reopening these orders. Shri Rao also criticized the order dated 22.7.1994, passed by the Tribunal, declaring 17.9766 standard holdings of land of the original land holders to be in excess as void, ab initio, particularly, because the said land was belonging to the respondents, who were admittedly the protected tenants in occupation of the land and in whose case, the Tribunal had passed the order approximately 20 years back, at the time when the impugned orders (dated 14.08.1975 and 27.10.1975) were passed. It was pointed out that no orders in respect of these lands could have been passed unless the respondents were noticed by the Tribunal, and further, the Counsel pointed out that the respondents had the Certificates issued under Section 38-B, which rendered the orders passed by the Tribunal in case of the original land holders, without jurisdiction. The Learned SeniorCounsel further contended that there was no question of the land inpossession of a protected tenant being declared as surplus land, which was liable to be surrendered. It was pointed out by the Learned Senior Counsel that the Certificates granted in favour of the respondents under Section 38-B of the Tenancy Act remained valid and in the present case, so remained valid, since they were not challenged, and at the same time, the Tribunal, under the Ceiling Act, had no jurisdiction to declare the said Certificate as illegal. The Learned Senior Counsel invited our attention to the provisions of the Tenancy Act to suggest that the tenancy rights were heritable rights. Our attention was also invited to Section 13(1) of the Ceiling Act, as also Section 38-B of the Tenancy Act. Shri Rao, therefore, contended that the order of the High Court was unassailable. The earned Senior Counsel also took us through the history of this lengthy litigation and pointed out that on 13.4.1983, Certificate of Ownership was issued under Section 38-B of the Tenancy Act and the mutation also

took place in favour of the respondents in respect of 90 acres 4 guntas of land, which was a land in question, which Certificate had attained the finality. The Learned Senior Counsel pointed out that the land concerned was sold after it was converted into the non-agricultural land to as many as 1,137 purchasers for residential purposes. It is on these conflicting claims that we have to examine the judgment.

8. On these conflicting contentions, the question which crops up is whether the concerned land can be included in the holding of the original land holders and be declared surplus to the detriment of the respondent Nos. 1-5. This question would depend upon the answer to the question as to whether the respondents ever got the status of a `protected tenant', vis- a-vis the concerned land, within the meaning assigned to that term in the Tenancy Act and what is the effect, and whether that status would result in excluding the land from the operation of the Ceiling Act Since Shri Sundaravardan also contended about reopening of the ceiling and tenancy cases, still another question would be whether the Government would now be justified in reopening the ceiling cases, which stood finalized, as also whether it would be justified in opening the cases, wherein the Certificates were granted to the respondents declaring them as protected tenants, vis- `-vis, the concerned land.

9. Before we take up the consideration on these questions, since the matter predominantly relates to the orders under the Ceiling Act, it would be worthwhile to consider few provisions of this Act. This Act which is called the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 came on the anvil with the assent of the President dated 29.7.1972 and was published in the official Gazette on 31.7.1972. However, it came into force on 1.1.1975. `Holding' is defined in Section 3(i) as under:

"3(i) `holding' means the entire land held by a person- (i) as an owner;

(ii) as a limited owner;

(iii) as an usufructuary mortgagee;

(iv) as a tenant;

(v) who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise; or in one or more of such capacities, and the expressions "to hold land" shall be construed accordingly." Term `Owner' is defined in Section 3(n) as under:

"3(n) `owner' includes a person by whom or in whose favour a trust is created; but does not include a limited owner; and in the case of any land not held under ryotwari settlement, a person who is or would be entitled to the grant of a ryotwari patta or to the registration as an occupant in respect of such land under any law for the time being in force providing for the conversion of such land into ryotwari tenure and where there is no such law, any person holding such land immediately before the specified date otherwise than in any one of the capacities in items (ii) to (v) Clause (i); but does not include a limited owner." (Emphasis supplied). Term `Person' is defined in Section 3(o) as under: "3(o) `person' includes an individual, a family unit, a trustee, a company, a firm, a society or an association of individuals, whether incorporated or not." Term `Tenant' is defined in Section 3(t) as under:- "3(t) `tenant' means a person who cultivates by his own labour or that of any other member of his family or by hired labour under his supervision and control, any land belonging to another under a tenancy agreement, express or implied: and includes a person who is deemed to be a tenant under any tenancy law for the time being in force; Term `Ceiling Area' is defined under Section 4 as under:

"4.Ceiling Area:- (1) The ceiling area in the case of family unit consisting of not more than five members shall be an extent of land equal to one standard holding.

(2) The ceiling area in the case of a family unit consisting of more than five members shall be an extent of land equal to one standard holding plus an additional extent of one-fifth of one standard holding for every such member in excess of five, so however, that the ceiling area shall not exceed two standard holdings.

(3) The ceiling area in the case of every individual who is not a member of a family unit, and in the case of any other person shall be an extent of land equal to one standard holding."

Thus, it's a charging Section. Section 5 provides the methodology for fixing the standard holding for different classes of lands and computation thereof. Section 7 speaks about the transfers of land between 24.1.1971 and the notified date, i.e, 1.1.1975. It's a complete scheme as to which transfer should be treated to be good and otherwise. In short, that Section bars the transfers in anticipation of and with a view to avoiding or defeating the object of the Ceiling Act. Under Section 8, every person has to give a declaration, whose holding on the notified date together with any land transferred by him on or after the 24.1.1971, whether by sale, gift, usufructuary mortgage, exchange, settlement, surrender or in any other manner whatsoever, and any land in respect of which a trust has been created by him on or after 24.1.1971, exceeds the specified limits. Under Section 9, the Tribunal created under the Ceiling Act has a duty to enquire into and determine the extent of area held or deemed to be held by the person on the notified date and to declare any land found in excess of the ceiling area. Section 10 speaks about the surrender of land in excess. It also provides as to which land can be surrendered and which land cannot be surrendered, and whether the surrender declared by the land holder is to be surrendered or not, has to be decided by the

Tribunal. Sub-Section 5 specifically provides that it would be open to the Tribunal to refuse or accept the surrender of any land, which has been converted into non-agricultural land and is rendered incapable for being used for agricultural purposes. Under Section 13, a special provision is made for the protected tenants. The Section provides that where the holding of any owner includes any land held by a protected tenant, the Tribunal shall, in the first instance, determine whether such land or part thereof has been transferred to the protected tenant under Section 38-E of the Tenancy Act, and if such transfer is made, such land shall be excluded from the holding of the owner and included in the holding of such tenant. Sections 15 and 16 speak about the amount payable in lieu of that land to the land holder. Section 20 speaks about the appeal and Section 21 about the revision against the orders passed by the Tribunal. This is the broad picture of the provisions of the Ceiling Act.

10. Let us, now, have look on some of the relevant provisions of the Tenancy Act. It must be remembered that this Act came on the legal scene in the year 1950. The term `Protected' is defined under Section 2(r) as under:-

"2(r) `Protected' means a person who is deemd to be a protected tenant under the provisions of this Act. Section 5 provides as to who can be deemed to be a tenant and more or the less, provides that a person lawfully cultivating to the land belonging to another person, would be deemed to be a tenant. Chapter IV deals with the protected tenants and declares that if a person had held any land as a tenant continuously for a period specified in Section 34(a)(i), (ii), (iii), then such person would be deemed to be a protected tenant.

11. There is no dispute in the present case that Late Shri T. Papi Reddy was holding the lands at the commencement of the Tenancy Act and he was a protected tenant in respect of the land including the lands in question. Section 38 which is extremely important for us, provides the rights of the protected tenants, which includes his rights to purchase the land from landholder's interest, subject to sub-Section 7. It also provides the modality as to how the said purchase would be enforced by the protected tenant, and also procedure, where the land holder refuse to accept the offer made by the protected tenant. Section 38-A is a procedure, where reasonable price is agreed to between the landholder and protected tenant. Section 38-B provides procedure, where the landholder agrees to relinquish his rights in favour of the protected tenant. Under that Section, an application is to be made to the Tribunal by the land holder, and then a Certificate is issued in favour of the tenant. Section 38- E specifically provides for the transfer of ownership of such lands held by the protected tenants. It provides that such lands would get automatically transferred with effect from the notified date and a Certificate in the prescribed form declaring him as the owner, would be issued by the Tribunal after holding the necessary enquiry. Sections 47 and 48, which were earlier in the Tenancy Act, stand deleted from 1969. The said Sections provided the permission to be had before such transfers were made under Section 38. Section 50-B(4) of the Tenancy Act gives a power to the Collector to act suo moto for examining the record relating to any certificate issued or proceedings taken by the Tahsildar under this Section for the purpose of satisfying himself as to the legality or propriety of such certificate or as to the regularity of such proceedings and pass such order in relation thereto as he may think fit. On this legal backdrop, it will be now for us, to consider the

contentions raised by the Learned Counsel.

12. The first and foremost contention raised by Shri Sundaravardan, Learned Senior Counsel, appearing on behalf of the appellants was that since on 25.2.1956, an Agreement was executed by the original land holders in favour of Late Shri T. Papi Reddy, whereby, he agreed to sell the land in question, Late Shri T. Papi Reddy, himself had rescinded his status as a protected tenant and thereafter, remained in possession only as an intended purchaser under the Agreement and that is where all his rights came to an end. The said Agreement is on the record. It is an unregistered document and suggests that the concerned land, admeasuring 90 acres of land, was agreed to be sold for Rs.2,592/-. This is the Agreement between Late Shri Khaja Shakhir Hussain and Late Shri T. Papi Reddy, the father of the respondents. On this, the Learned Counsel pointed out that if this was so, then there would be no question of the status of protected tenant to be claimed by either Late Shri T. Papi Reddy or his sons like the present respondents.

13. In the first place, this is only an Agreement of Sale and not a Sale Deed inter-partes. The Agreement clearly suggests that the parties will appear before the Revenue Authority for obtaining the necessary permission for such transfer under the Tenancy Act, and on obtaining the permission, the Sale Deed would be executed between the parties. It also provides that if the permission is not granted, the consideration would be returned. All this was necessary because at that time, under Section 47and 48, the permission of Tahsildar was required for alienation of agricultural land. However, in the year 1969, Sections 47 and 48 were deleted from the Tenancy Act, thereby, there was no permission required and indeed, it seems that within four months of this Agreement, he effected a family partition by dividing all his lands, including the present land under six equal shares, taking one share for himself and the remaining shares for his five sons. The matters do not seem to have progressed thereafter regarding this agreement.

14. However, as soon as Ceiling Act came into existence, Late Shri T. Papi Reddy and all his sons, including the respondents, filed separate declarations in the lands in their possession under Section 8 of the Tenancy Act. These claims were duly verified and it was claimed that these verifications took place on 31.7.1975 and 8.8.1975. This claim has not been disputed at any time. It seems that the enquiry was made on the basis of these declarations and even a public notice was issued as prescribed by the rules, which publication took place on 16.6.1975 and 28.6.1975. However, on receiving `No Objection', it is found that the declarants were the Pattedars in the orders passed. It was specifically mentioned that the present respondents had claimed 1/6th share in the lands held by Late Shri T. Papi Reddy as owner under Section 38-E of the Tenancy Act. It was mentioned in the order further that even if the $1/6^{th}$ share claimed by one son is taken into consideration, the total holding of the son would be less than ceiling area and as such, the claim was being accepted and the matters were closed, holding that the individual sons did not own the land in excess of the ceiling areas. The orders of similar nature were passed in case of all the five respondents herein, so also, the orders were passed in Late Shri T. Papi Reddy's case. Undoubtedly, in all the orders related to the sons, the Tribunal did mention that the declarant had not produced any proof as to how the declarant is not so far entitled to share in the lands of his father Late Shri T. Papi Reddy. However, realizing that even if that share is included, since the land in possession of the declarant son does not exceed

the ceiling limit, the matters were left at that, and it was concluded that the individual sons did not hold land in excess of the ceiling area.

15. We have also seen the order passed in the case of Late Shri T. Papi Reddy himself. Undoubtedly, Late Shri T. Papi Reddy also had shown that he had purchased the land measuring 87 acres 33 cents as a protected tenant and had shown that he had only 1/6th share in that, and theremaining land was held by his major sons. He claimed the status of a protected tenant in respect of the other land in Survey Nos. 24 and 25, measuring 33 acres 14 cents and claimed 1/6th share in the remaining land. The Tahsildar in his Report had shown that the declarant was owner of certain lands, measuring 8 acres 79 cents and was in possession of Survey Nos. 24 to 30 and 39, measuring 122 acres 7 cents as protected tenant. Therefore, even at that stage, the status of at least Late Shri T. Papi Reddy as a protected tenant, was not disputed. On the other hand, that can be treated as an admitted position, thanks to the VerificationReport, relied upon by the Tribunal. The Tahsildar in that VerificationReport had computed the standard holding of the declarant as 2.2270 and after allowing the land of one standard holding, recommended the surplus land at 1.2270 standard holding. However, the order shows that thedeclarant had filed the Counter on 4.9.1975 before the Tribunal that Late Shri T. Papi Reddy was the protected tenant in respect of Survey Nos. 24 to 30 and 39, and he was in possession of the said land as a Karta of the Joint Family, consisting himself and his five sons, namely, the present respondents. He pleaded that he was holding the tenancy for and on behalf of Joint Family in his character as a Karta and consequently, the rights of the protected tenants would be deemed to have been conferred on the entire Joint Family and, therefore, the major members of the Joint Family, namely, the present respondents herein, had a share in the equal proportion of the said property. The Tribunal has further taken a note that Late Shri Khaja Shakhir Hussain, the original land holder had agreed to alienate the said land and an Agreement of Sale referred to earlier, was also produced before the Tribunal. The theory of inter-se partition, which took place in June, 1956 was also pressed into service and referred to bythe Tribunal in its order. Amongst the documents filed before the Tribunal was the Agreement of Sale dt. 25.2.1956 and the four witnesses were also examined, including Late Shri T. Papi Reddy himself. The Tribunal took note of the fact that Late Shri T. Papi Reddy had ancestral land of 9 to 10 acres at Meerpet Village, which was being cultivated by himself, and in addition thereto, purchased 123 acres 7 guntas of land from Late Shri Khaja Shakhir Hussain etc. in the year 1955 and the agreement of sale was executed in the year 1956. Even the consideration was paid and this consideration was from the joint earnings of himself and his sons from the cultivation of the lands held by the Joint Family, thereby, meaning that there was a nucleus with the Joint Family and the said Joint Family property did produce income, out of which the concerned 123 acres 7 guntas of land came to be purchased, so as to become a Joint Family property and it is, therefore, that the said lands were treated to be the Joint Hindu Family property and were partitioned in the year 1956, which partition was evidenced in the mutation of these lands, also in the Revenue records. The Tribunal, however, found that though mutation of ancestral land was effected, the purchased lands were not yet mutated and they still remained in the name of land holder Late Shri T. Papi Reddy, however, the land revenue was being paid by Late Shri T. Papi Reddy and his sons separately. The Tribunal then referred to the evidence of Shri K. Bhujang Reddy, Shri Vanga Bikshapathi Reddy and Shri Challa Linga Reddy. These three witnesses supported the theory of partition in the year 1956, and also deposed that Late Shri T. Papi Reddy and sons were divided, and living separately and cultivating their properties (lands) accordingly. The Patwari was also examined, who claimed that he had no information about the division of lands between Late Shri T. Papi Reddy and his sons, but they were separately enjoying the concerned lands for grazing their cattle. The question was thoroughly gone into by the Tribunal.

Relying on Section 34 of the Tenancy Act, and also on definition of `Person' given in sub-Section 2 thereof, the Tribunal came to the conclusion that the whole partition became a Joint Family property in the hands of the acquirer. The Tribunal has also found that Late Shri T. Pappi Reddy was the protected tenant in respect of 123 acres 17 guntas of land, and the definition of a `Protected Tenant' included undivided Joint Hindu Family members also. The Tribunal, therefore, concluded in the following words:

"Therefore, the sons of the declarant were not divided upto 1956, were also having right in the lands held by his father as protected tenant."

The Tribunal ultimately held:

"There is a case to believe that the declarant was having ancestral lands and out of the income of these lands, he purchased the lands from Shri Khaja Shakhir Hussain etc. in the year 1956 and, therefore, these lands also form part and parcel of joint family properties in which his five major sons will have equal notional share and the share of the declarant will be 1/6th."It is on this basis, that the Tribunal closed the case.

16. Very surprisingly, and to the dismay of Shri Sundaravardan, Learned Senior Counsel for appellants, this order has remained unchallenged and has become final. Late Shri T. Papi Reddy almost immediately after this order on 27.10.1975, died within two months and the order remained as validly passed order by the Tribunal with full jurisdiction. Even the other cases of the respondents were finalized and they were also closed. In case of Late Shri T. Papi Reddy, it was held that he did not hold land in excess of the ceiling on the notified date, i.e., on 1.1.1975. This proves to be a complete answer to the case pleaded by Shri Sundaravardan. This order, particularly, in case of Late Shri T. Papi Reddy, which was heavily relied by Shri Rao, Learned Senior Counsel appearing on behalf of the respondents, firstly holds that Late Shri T. Papi Reddy was a protected tenant and his status as a protected tenant was not an individual status, but, the status belonged even to the other members of his undivided family. It is further finally held in this order that Late Shri T. Papi Reddy, as such, had acquired the property of 123 acres 17 guntas out of income of the Joint Hindu Family and thus, the whole property became a joint property, so as to open for partition and accordingly, the partition was not only effected, but, acted upon also by the separate cultivations of all the six members. On this strong background, it will be futile to say that Late Shri T. Papi Reddy or his sons, the present respondents herein, were not the protected tenants. They were not only treated as the protected tenants, but their individual cases were also dealt with by the Tribunal, which held that individually, they did not hold any land more than the ceiling area. All these orders right from 1975 till today, i.e., for 33 years, have remained unchallenged.

17. Shri Sundaravardan then took us to Section 13 of the Ceiling Act and pointed out that only the land covered under Section 38-E of the Tenancy Act, was to be excluded and, therefore, such

exemption will not be available for the land covered under Section 38-B, and as such, the said land was liable to be included in the holding of the land holders. It is true that Section 13 of the Ceiling Act suggests that the land covered under Section 38-E and transferred to the protected tenant shall be excluded from the holding of such owner. Section 13 of the Ceiling Act reads as under:-

"Special Provision for protected tenants:- (1) Where the holding of any owner includes any land held by a protected tenant, the Tribunal shall, in the first instance, determine whether such land or part thereof stands transferred to the protected tenant under Section 38-E of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950, and if so, the extent of land so transferred; and such extent of land shall thereupon be excluded from the holding of such owner and included in the holding of such tenant, as if the tenant was the owner of such land for the purposes of this Act.

(2) Subject to the provisions of Sub-Section (1), the relevant provisions of this Act aforesaid shall apply in the matter of such land by such protected tenant."

It will be seen from the language that the Tribunal has to decide the extent of land transferred under Section 38-E as a first duty, and then to exclude such land. The use of the words "in the first instance" only suggests that the first finding that the Tribunal has to give, is about the land covered under Section 38-E of the Tenancy Act. However, the Section nowhere provides that the Tribunal does not have to decide about the lands covered under Section 38-B of the Tenancy Act. We have already explained that under Section 38-B, the land holders in this case, have relinquished their interests in the land, way back in 1983 and the certificates were issued in favour of the respondents, which certificates have not been disputed till today. This is, apart from the fact that the said land in respect of which the certificates were issued under Section 38-B, has also been held in the holding of the respondents herein. Under such circumstances, it cannot be argued that this land should have been held in the holding of the landlord and should have been made available for distribution. The High Court has in this behalf relied on the Judgment reported in 1976 ALT 171 (NRC) B. Shankarayya Vs. Land Reforms Tribunal, Kamareddy. For the reasons that we have given, it will have to be held that even in respect of the lands covered under Section 38-B in this case, where the rights of the respondents were finally decided both under Tenancy Act and the Ceiling Act, this land could not have been made available for been declared as surplus land, holding it to be within the holding of the land holder.

18. As if all this is not sufficient, there is Certificate on record dt. 13.4.1983. In that Certificate dt. 13.4.1983, the Revenue Divisional Officer had certified that the five respondents are the protected tenants of the land specified in the order, which belonged to Late Shri Khaja Shakhir Hussain, Shri Khaja Nasir Hussain and Smt. Razia Sultana, the land holders herein. It also suggests that these land holders had relinquished all their rights of the lands described in favour of the five respondents under Section 38-B of the Tenancy Act and the five respondents, with effect from that date, shall be the owners of that land described. Needless to mention that there is a complete description of the

lands of Survey Nos. 24 to 30 and 39. We have seen the Certificate ourselves in the prescribed form and we are

satisfied that the Certificates have been given after the due enquiry. The three land holders, namely, Late Shri Khaja Shakhir Hussain, Shri Khaja Nasir Hussain and Smt. Razia Sultana have also given their declarations, which were verified by the Tahsildar, Hyderabad, East Taluk. It is also pointed out that the names of the five respondents are found in the lists of protected tenants maintained in Register No. 1 and other Registers. Not only this, there is an order to the effect that, in pursuance of the Certificate under Section 38-B, the mutation is proposed in respect of the five respondents, which order is signed by D.R., Sarrornagar, R.R. District, Andhra Pradesh. This is the last nail in the coffin of the State Government case. Even these orders have remained unchallenged by any person muchless, by the State Government. Once this is the position, then it is obvious that under the provisions of Ceiling Act, these lands could not have been declared as the surplus land.

19. A very peculiar thing has come to our notice that in their declaration, the land holders Late Shri Khaja Shakhir Hussain, Shri Khaja Nasir Hussain and Smt. Razia Sultana had included the Survey Nos. 24 to 30 and 39 of Meerpet Village, measuring 123 acres 19 cents. They had also specifically declared that these lands were with the protected tenants. However, surprisingly, no notices were issued to the petitioners, and ultimately, their ceiling case came to be decided as late as on 22.7.1994. It is then, that a notice came to be issued in form No. VIII that the lands specified in the Schedule were proposed to be surrendered or selected for surrender under Section 10 of the Ceiling Act. This document includes and mentions Survey Nos. 24 to 30 and 39. It is on that basis, that the present respondents raised objections, which objections were rejected, requiring the petitioners to file revision before the High Court, which revision was allowed. Considering all these aspects and more particularly, the orders passed by the authorities, we are of the clear opinion that the judgment of the High Court was correctly decided.

20. Shri Sundaravardan tried to show that the tenanted land could not have been partitioned. However, we are not required to go into that question, for the simple reason, that there are valid orders passed by the Tribunal, having the jurisdiction to pass the same, which would show that once the land was shown and concluded to be in the holding of the protected tenant, it could not have been included in the holding of the landlord, muchless, it could not have been declared to be surplus. This position is all the more consolidated, when we see that the respondents herein, were never the parties to the ceiling proceedings.

21. A decision was relied on by Shri Sundaravardan, reported in 2000 (9) SCC 339 R. Kanthimathi & Anr. Vs. Beatrice Xavier (Mrs.). In our opinion, the said decision which relates to the rent control matter and thus, the house tenancy, would have no application. Another decision relied on by Shri Sundaravardan, reported in 2006(4) SCC 214 N. Srinivasa Rao Vs. Special Court under the A.P. Land Grabbing (Prohibition) Act and Others, also has no relevance. The Learned Senior Counsel tried to rely on this decision only to show that if the transfer of agricultural land was in violation of Section 47 and 49, such prosecution would be void. In the concerned case, this prosecution was held to be void in the light of the circumstances that the transfer in this case was

made by a protected tenant as an agriculturist or a non-agriculturist, which was prohibited by the Tenancy Act. We do not see any relevance of this case. Shri Sundaravardan contended that the prosecution on 25.2.1956 was a void prosecution. Even if, we agree with that proposition, the question remains that ultimately, respondents have been declared to be the protected tenants, and the Certificates have been granted in their favour and their individual cases have also been finalized. The ruling has no relevance.

22. The third decision relied upon is reported in 1995 (3) SCC 327 State of A.P. Vs. S. Vishwanatha Raju & Ors. The Learned Senior Counsel relied on this case, as in this case, this Court had taken suo moto action, seeing that there was an attempt to take out substantial acreage of 900 acres of land out of the purview of the Ceiling Act by the device of agreements of sale and the concerned officers were negligent in not carrying out the orders of the authorities in revision. It is on these circumstances, that this Court took suo moto action. The Learned Senior Counsel urged that we should also take such suo moto action and put the clock back, insofar as, the orders passed by the Tribunal in case of respondents under the Ceiling Act, as also in respect of the Certificates issued under Section 38-B are concerned. We do not see as to how we would order a suo moto action. The cases are entirely different cases. In this case, there has been no fraud as in the reported decisions. Lastly, by way of almost a desperate argument, Shri Sundaravardan urged that under Section 50-B (4) of the Tenancy Act, the Collector has a suo moto power to call for and examine the record relating to any Certificates issued or proceedings taken by Tahsildar under the Section for the purpose of satisfying themselves as to the legality or propriety of such Certificate or as to the regularity of such proceedings, may pass such order in relation thereto as he may think fit. The Learned Senior Counsel argued that this Court had discussed about this issue in 2003 (7) SCC 667 Ibrahimpatnam Taluk Vyavasaya Coolie Sangham Vs. K. Suresh Reddy and Others. He suggested that the Certificates issued in favour of the respondents can still be reopened via Section 50-B (4) of the Tenancy Act. We have no doubts that there existed such a power in Collector via the said provision 50-B(4). The question is whether there was any fraud played or any impropriety shown, more particularly, on the part of the respondents herein, in whose favour the said Certificates were granted. When we see the whole conspectus of the facts, it is apparent that at no point of time, have the respondents or even their late father ever played any fraud against any authority, nor did they ever suppress any relevant fact from any authority. They openly came out with a case regarding Agreement executed on 25.2.1956, thereafter, they openly propounded a theory of partition, which theory was accepted by the Tribunal in ceiling matter in their case, as well as, in the case of their father Late Shri T. Papi Reddy and ultimately, they obtained the Certificate under Section 38-B, way back in 1983. Today, 25 years have elapsed after those Certificates have been granted. We do not see any impropriety in the said proceedings, which would justify a suo moto action on the part of the Collector.

23. This Court has considered the nature of that power in the case of Ibrahimpatnam Taluk Vyavasaya Coolie Sangham Vs. K. Suresh Reddy and Others (cited supra) and observed in para 9:-

"9. ..... Use of the words "at any time" in sub-Section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo moto power could

be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo moto power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of the provisions of other Acts (such as Land Ceiling Act)....."

From this, the Learned Senior Counsel argued that since there is no period of limitation prescribed for this power, the Collector would be justified in initiating an action. In our opinion the argument is firstly, premature. No such action has ever been proposed. Secondly, the Court has further observed that such action has to be within reasonable time though the words "at any time" are used in the provision. In the same para, the Court further observed:

"9. ..... Use of the words "at any time" in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary mean sing of the words "at any time", the suo moto power under sub-Section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo moto power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But, that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."

The observations are extremely fitting in the present case. Here also, after the Certificates have been issued, 25 long years have elapsed. The rights of the parties have already been crystallized. Not only this, but, it is the report of Shri Rao that the said lands have now been converted and sold for to as many as approximately 1100 persons, by way of residential plots. We do not think that there is any justification at this stage to use a suomoto power and to cancel the Certificates, so as to put the clock back. That would be, in our opinion, a completely unnecessary exercise, not warranted by any of the Sections. In that view, even this argument has to

be rejected. Before parting, we must observe that the subsequent orders in case of Late Shri Khaja Shakhir Hussain, Shri Khaja Nasir Hussain and Smt. Razia Sultana, seem to have passed without even noticing the earlier orders passed and without even bothering to send notices to the interested parties. That would be the minimum expectation of law. By that, as it may, the Appeal has no merits, and is dismissed with costs.