SUPREME COURT OF INDIA

Edukanti Kistamma (Dead) Thr.Lrs.

Vs.

S. Venkatareddy (Dead) Thr.Lrs.

C.A.No.1664 of 2004

(Tarun Chatterjee and Dr. B.S. Chauhan JJ.)

03.12.2009

JUDGEMENT

DR.B.S.CHAUHAN J.,

1. This appeal arises out of the judgment and order dated 9.10.2002 of the Andhra Pradesh High Court passed in Civil Revision Petition No. 4289 of 2001 and CC No. 829 of 2002 by which the High Court set aside the concurrent findings of fact recorded by the Additional Revenue Divisional Officer, Land Reforms Tribunal and the Appellate Tribunal to the effect that predecessor-in-interest of the appellants were protected tenants under the provisions of The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter called as The Act 1950).

2. The facts and circumstances giving rise to this case are that predecessor-in-interest of the appellants claimed to be protected tenants and sought ownership certificates to become full owners of the suit land.

3. The respondents, herein, claimed to have purchased the land from the original land holder and sought to disentitle the appellants of their rights. As per the tenancy register of 1951, the predecessor-in-interest (E.Verrraiah) of the Appellant No.1 alongwith one B. Ramchander had been shown as tenants in respect of the lands in survey Nos. 50, 61 & 74. Similarly, the Tenancy Register of 1958 revealed that the predecessor-in-interest of the appellant nos. 2 & 3 and some other persons were tenants in respect of survey Nos. 51, 52, 53 & 54. On introduction of the Andhra Pradesh Land Ceiling Act, 1973 (hereinafter called as Act 1973), a provisional list dated 31.12.1974 was issued showing the predecessor-in-interest of the appellants as protected tenants of the said lands. The respondents filed objections dated 18.2.1975 before the Additional Revenue Divisional Officer (hereinafter called as RDO) claiming that their predecessor-in-interest i.e. father had purchased the said land from the original tenure holder Smt. Ayesha Begum in the year 1954. Therefore, appellants may not be issued the ownership certificates under Section 38-E of the Act 1950.

4. After considering the claims and counter claims, the RDO dismissed the Claim Petition/objections filed by the respondents vide judgment and Order dated 31.5.1975. The RDO held that the objectors neither produced any document on the basis of which such objections could be entertained nor, adduced any other evidence to substantiate their claim of ownership. As the names of the predecessor-in-interest of the appellants were found in the tenancy records pertaining to the years 1951 and 1958, they were held to be protected tenants. The alleged surrender of tenancy rights by the predecessor-in-interest of appellant no. 2, by filing affidavit was found to be inconsequential for want of compliance with the statutory requirements of Section 19 of the Act 1950. The RDO also commented upon the decree of the Civil Court in favour of the respondents and against Smt. Ayesha Begum, the original tenure holder, as the decree was passed ex-parte and the present appellants or their predecessor-in-interest were not impleaded as defendants in the suit.

5. Being aggrieved, the respondents preferred the appeal before the Joint Collector, Rangareddy District, Hyderabad mainly on the ground that they had been in possession of the suit lands for the last 50 years i.e. since 1931 and that they had acquired title over the said land. The Appellate Authority dismissed the appeal filed by the respondents on the ground that they could not produce any evidence of acquiring the possessory rights over the said land or having obtained the possession of the land lawfully. The tenants were entitled for possession of the land in accordance with the provisions of the law. The Appellate Authority also rejected the prayer of the respondents that the decree of the Civil Court in OS No. 5 of 1963 between father of the respondents and original tenure holder Smt. Ayesha Begum be given effect to, on the ground that none of the protected tenants had been impleaded as defendant in the suit. However, the Appellate Authority remanded the matter to RDO only for a limited purpose i.e. to examine as to whether the alleged surrender of tenancy by submitting the affidavits by the predecessor-in-interest of Appellant no. 2 (Goundla Paramaiah) and some other protected tenants namely B. Ramchander and Begari Laxmaiah (not parties herein), could be in consonance with the provisions of the Act 1950. So far as the present case is concerned, the remand order was limited only with respect to the predecessor-in-interest of Appellant No. 2, namely, Goundla Paramaiah.

6. So far as the predecessor-in-interest of the Appellant Nos. 1 and 3 are concerned, the appeal was

dismissed in toto and they were declared to be protected tenants and ownership certificates which were issued under Section 38-E of the Act 1950 thus, attained finality. It may also be pertinent to note that respondents did not prefer any revision against the judgment and order dated 22.9.1981 of the Appellate Authority, thus, the said order attained finality.

7. On the basis of the aforesaid judgments and orders of the RDO and the Appellate Authority, the appellants filed an application for restoration of possession.

8. In pursuance of the remand order, the RDO considered the matter afresh only in respect of the predecessor-in-interest of Appellant No. 2 and vide order dated 10.5.2000, it came to the conclusion that the surrender was invalid, as procedure prescribed under Section 19 of the Act 1950 had not been followed. The RDO further observed that the said tenant, Goundla Paramaiah, was entitled to approach Mandal Revenue Officer for restoration of possession.

9. The respondents, being aggrieved, preferred the appeal against the order passed by RDO dated 10.5.2000 and it was dismissed by the Appellate Authority vide Judgment and Order dated 3.3.2001 observing that the alleged affidavits filed by the appellant no. 2 and some others were not in consonance with the procedure prescribed under Section 19 of Act 1950 and therefore, findings of fact recorded by the RDO did not warrant any interference.

10. Being aggrieved, the respondents preferred Civil Revision Petition No. 4289 of 2001 before the High Court which had been allowed holding that the certificates in favour of the appellants had been issued without any proper appreciation of the material available on record. The RDO and the Appellate Authority had acted illegally and passed the orders without following the procedure prescribed under the Act 1950. Hence, this Appeal.

11. Shri Ranjit Kumar, learned senior counsel appearing for the appellants has submitted that the appellants/predecessor-in-interest of the appellants had been granted the status of protected tenants. In pursuance thereof, the certificates under Section 38-E had been issued. The respondents merely challenged the issue of certificate without challenging the grant of status of protected tenants. In absence of a challenge of the basic order, challenge to the consequential order remains inconsequential.

Issue of certificate in pursuance of confirmation of the status cannot be equated to the grant of status, as the process of issuance is merely a ministerial act. The appellant nos. 1 and 3 had been declared protected tenants by RDO and the Appellate Authority. The remand order passed by the Appellate Authority to RDO was only to examine as to whether the alleged affidavit of surrender was in conformity with the statutory provisions and was limited only in respect of predecessor-in-

interest of appellant no. 2. The order of the Appellate Authority was not challenged and, thus, attained finality. Therefore, it was not permissible for the High court, in exercise of its revisional jurisdiction, to reopen or disturb the grant of status of protected tenants so far the appellant nos. 1 & 3 were concerned. The respondents could not be in possession of the land in pursuance of any agreement to sell for 50 years. More so, the judgment and decree of the Civil Court passed in the year1963 could not be binding upon the appellants, as they had not been impleaded as defendants in the suit. The judgment and decree against Smt. Ayesha Begum, the original tenure holder also remained ex-parte, as she did not contest the suit. The respondents neither produced any agreement to sell nor, any sale deed had ever been executed in their favour. More so, their claim of having possession also varied time and again. Different dates/periods had been disclosed before different authorities at different stages. They mentioned at one place that they had been in possession since 1950 and other places since 1954, 1955, 1962 and 1965. Thus, it is clear that possession has not been claimed since a particular date or year by the respondents. Respondents had no right to challenge the grant of status of protected tenant or issuance of the certificates in pursuance thereof. The Act 1950 is a beneficial legislation to provide the tenants the right of ownership. Therefore, it requires liberal construction and it must be in favour of the tenant so that the object for which the provisions were enacted may be achieved. Therefore, the appeal deserves to be allowed.

12. Per contra, Shri P.S. Narasimha, learned senior counsel appearing for the respondents has submitted that the appellants/tenants had surrendered their rights in the year 1958, and thus, had lost all rights and interests in the suit land. Application for possession should have been filed within the period of limitation prescribed by the Act. The claim of the appellants for restoration of possession was much belated and has rightly been dealt with by the High Court. The respondents had been the owner of the land by virtue of the judgment and decree of the Civil Court which had to be given effect to. There is also a Will in favour of the respondents which confers title on them. Therefore, no fault can be found with the impugned judgment and order passed by the High Court. The appeal lacks merit and is liable to be dismissed.

13. We have considered the rival submissions made by learned counsel for the parties and perused the records.

14. So far as the present appeal is concerned, it may be necessary to refer to certain statutory provisions of the Act 1950. Section 2(r) Protected - means a person who is deemed to be a protected tenant under the provisions of this Act. Section 2(w) - Tribunal means the Agricultural Lands Tribunal constituted under sub-Sections (1) of Section 87 for the area concerned; where no such Tribunal has been constituted, the Deputy Collector or other officer authorized under sub-section(4) of the said section. Section 19. Termination of Tenancy: (1) Notwithstanding any agreement or usage or any decree or order of a Court of law, but subject to the provisions of sub-section (3), no tenancy of land shall be terminated before the expiration of the period for which the land is leased or deemed to be leased otherwise than by the tenant by surrender of his rights to the landholder at least a month before the commencement of the year: Provided that such surrender is made by the tenant in writing and is admitted by him before and is made in good faith to the satisfaction of the Tahsildar.

x x x x x x x x x Section 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 Tahsildar in writing in the prescribed form for such possession. x x x x x x Section 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 has held such land as a tenant continuously for the period of not less than six years, being a period wholly included in the Fasli years 1342 to 1352 (both years inclusive), or for a period of not less than six years immediately preceding the Ist day of January, 1948, or for a period of not less than six years commencing not earlier than the 1st day of the Fasli year 1353 (6th Oct, 1943), and completed before the commencement of this Act, and has cultivated such land personally during such period; (2) & (3) x x x x x x x x Section 37-A - Persons holding lands as tenants at the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1955 to be deemed to be protected tenants : x x x x x x x Section 38. Right of protected tenant to purchase land. x x x x x x x Section 38-E. - Ownership of lands held by protected tenants to stand transferred 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 land-holders 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; x x x x x x x (2) A certificate in the prescribed form declaring him to be owner shall be issued by the Tribunal after holding such enquiry as may be prescribed, to every such protected tenant and notice of such issue shall simultaneously be issued to the landholder. Such certificate shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the landholder and all other persons having any interest therein: Provided that where the land, the ownership of which has been transferred to the protected tenant under sub-section (1), is in the occupation of a person other than the protected tenant or holder of the certificate issued under this sub-section, it shall be lawful for the Tahsildar to restore the possession of the said land to the protected tenant or holder of the certificate, after giving notice of eviction to the occupant thereof, in the prescribed manner. x x x x x x x (5) Notwithstanding anything contained in this section or Section 19, the Collector may, suo motu at any time, hold an enquiry with a view to ascertain the genuineness of the surrender of the right made by the protected tenant under clause (a) of sub-section (1) of Section 19, for the purpose of effecting the transfer of ownership under this section, and pass such order in relation thereto as he may think fit. Section 47 : (Omitted by A.P. Act No. 12 of 1969) (1) Notwithstanding anything contained in any other law for the time being in force or in any decree or order of a Court, no permanent alienation and no other transfer of agricultural land shall be valid unless it has been made with the previous sanction of the Collector.

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15. The aforesaid provisions of the Act 1950 have been the subject matter of consideration by the

courts time and again.

Courts after analyzing the statutory provisions have explained the scheme of the Act. A Full Bench of the Andhra Pradesh High Court in Sada and etc. etc. vs. The Tahsildar, Utnoor, Adilabad District and Anr., etc. etc., AIR 1988 AP 77 considered the scope of the provisions of Section 38-E and held that there is no requirement in the Act 1950 that protected tenant should also be in possession on the date specified in the notification issued under Section 38-E(1). However, it should be subject of course, to the limitation with regard to the extent of holdings as specified in Section 38(7) and to the proviso to Section 38-E(1).

Once, persons who held the land on the dates or for the periods mentioned in Sections 35, 37 and 37-A and the requirement of the physical possession on the dates specified in those sections, has been fulfilled, such persons have become protected tenants.

Once a person becomes a protected tenant, he earns a qualification to become an owner by force of the statute. On the issue of surrender of rights, the Full Bench held that if a tenant had voluntarily surrendered his rights prior to 4.2.1954 (the date of 1954 Amendment), and put the landholder in possession, be it without intervention of the Tahsildar, he could not claim the right of ownership under Section 38-E(1) of the Act 1950. The Court further held that surrender of rights must be in conformity with the mandatory requirements of the statutory provision.

16. In Kotaiah & Anr. vs. Property Association of the Baptist Churches (Pvt.) Ltd., AIR 1989 SC 1753, this Court considered the provisions of the Act and explained the scheme as under: 18. 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. .. (ii) The protected tenant cannot be dispossessed, illegally by the landlord or anybody else. If so dispossessed, the Tahsildar 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 landlord by himself cannot dispossess the protected tenant even if the tenancy is terminated in accordance with the law. The landholder will have to take recourse to Sec.32. He must approach the Tahsildar 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.

17. In N. Srinivasa Rao vs. Special Court under the A.P. Land Grabbing (Prohibition) Act & Ors. AIR 2006 SC 3691, this Court considered the scope of Section 47 of the Act, 1950.

Though the said section has been omitted vide Amendment Act 1969 but as the transfer in the said case had been prior to the said date of omission, this Court held that if the land is under tenancy of another person, transfer thereof is not voidable and not capable of being avoided but, the scheme of the Act 1950 reflected that it was a void ab initio transaction.

18. In Babu Parasu Kaikadi (dead) by Lrs. vs. Babu (dead) Thru. Lrs., AIR 2004 SC 754, this Court considered a similar provision which provided for the procedure for surrender under the Bombay Tenancy and Agricultural Lands Act, 1948 and on placing reliance upon its earlier judgments in Ramchandra Keshav Adke (dead) by Lrs. vs. Govind Joti Chavare & Ors. AIR 1975 SC 915; Bhagwant Pundalik vs. Kishan Ganpat Bharasakal & Ors. AIR 1971 SC 435; and Abdul Ajij Shaikh Jumma & Anr. vs. Dashrath Indas Nhavi & Ors. AIR 1987 SC 1626, came to the conclusion that the provisions are mandatory in nature and any departure from the statutory requirement would make the surrender invalid. The Act had been enacted for beneficent purpose and importance of the provisions for efficacious implementation of the general scheme of the Act, all unerringly lead to the conclusion that the provisions relating to the procedure of surrender of tenancy rights were intended to be mandatory and any deviation thereof would be fatal. Disobedience of even one of the said mandates would render the surrender invalid and ineffectual and the consequence of the violation of the mandatory provisions would be that the surrender would be rendered non-est for the purpose of the Act.

19. In view of the above, it is evident that the scheme of the Act provides that a person who is a protected tenant has a right to get the ownership in accordance with the statutory provisions, provided the total area of the land owned by the landholder including the land under the cultivation of his tenants is more than three times the area of a family holding for the local area concerned. The person should be in lawful possession of the land on the date of commencement of Act 1950 to claim benefits under the Act. The Government has to make a declaration by publishing the notification in the Gazette in respect of any area and from such date as may be specified therein, that the ownership of all lands held by protected tenants which they are entitled to purchase from their land-holders in such area under the Act, subject to the conditions laid down under section 38(7) of the Act would stand transferred to and vest in the protected tenants holding them as such and from such date the protected tenants shall be deemed to be the full owners of such lands. The certificate issued under section 38-E(2) shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate, as against the landholder and all other persons having any interest therein. In case the protected tenant is not in possession of the land, he has a right of restoration of the possession of the said land through the Tahsildar. The protected tenant cannot be dispossessed illegally by the landlord or anybody else. If so, dispossessed, he has a right to restoration of the possession. He can be dispossessed only by taking recourse to the procedure prescribed under section 32 of the Act, 1950. There is a complete embargo on the right of

the landholder to alienate the tenanted land to third party without giving an option to the tenant to purchase the land.

Section 47 of the Act, 1950 (omitted by amendment of 1969) provided that any transfer of such land except, to the protected tenant shall be void ab initio. The protected tenant may surrender his rights by strict adherence to the statutory requirements under the Act, 1950. In case there is any deviation of any such requirement, it would render the surrender ineffective and inconsequential.

20. 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 (vide P. Chithranja Menon & Ors. v. A. Balakrishnan & Ors., AIR 1977 SC 1720; H.V. Pardasani etc. v. Union of India & Ors., AIR 1985 SC 781; and Government of Maharashtra & Ors. v. Deokars Distillery, AIR 2003 SC 1216).

21. Indisputedly, the grant of a right or a permit/licence under any statutory provision requires determination of rights and entitlement of the parties. Once such a right is determined, the issuance of the order on the basis of such determination remains a ministerial act. In Kundur Rudrappa v. The Mysore Revenue Appellate Tribunal & Ors, AIR 1975 SC 1805, this Court examined the provisions of the Motor Vehicles Act, 1939 wherein, Section 64 provided for an appeal against the grant or refusal of the grant of a permit on a route. In the said case, the appeal was filed only against the order of issuance. This Court held that such an appeal was not maintainable for the reason that issuance of permit was only a ministerial act, necessarily following the grant of the said permit and as no appeal was maintainable against the order of issuance. The order of the Tribunal was a nullity for want of competence. The Court further held that in such an eventuality, the permit granted to the other party could not have been cancelled and directed for issuance of the permit. Same view has been reiterated by this Court in Sharif Ahmad & Ors. v. The Regional Transport Authority, Meerut & Ors., AIR 1978 SC 209. In A.P.S.R.T.C., etc. etc. v. State Transport Appellate Tribunal & Ors., AIR 1998 SC 2621, this Court observed that actual issue of permit cannot be equated to the grant thereof, as both are separate things and issuance will be consequential to the grant of the permit. In fact, it is the grant and not issuance of the permit, which requires to be challenged.

22. The Act 1950, being the beneficial legislation requires interpretation to advance social and economic justice and enforce the constitutional directives and not to deprive a person of his right to property. The statutory provisions should not be construed in favour of such deprivation. Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case, there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The Court must be strong against any

construction which tends to reduce a statutes utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose. (vide S.P. Jain v. Krishna Mohan Gupta & Ors., AIR 1987 SC 222; Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. & Ors., AIR 1987 SC 1023; Secretary, Haryana State Electricity Board v. Suresh & Other etc. etc., AIR 1999 SC 1160; Gayatri Devi Pansari v. State of Orissa & Ors., AIR 2000 SC 1531; High Court of Gujarat & Ors. v. Gujarat Kishan Mazdoor Panchayat & Ors., AIR 2003 SC 1201; Indian Handicrafts Emporium v. Union of India, AIR 2003 SC 3240; Ashok Leyland Ltd. v. State of T.N., (2004) 3 SCC 1;

Ameer Trading Corpn. Ltd. vs. Shapoorji Data Processing Ltd., AIR 2004 SC 355; Deepal Girishbhai Soni & Ors. v. United Insurance Co. Ltd., Baroda, AIR 2004 SC 2107; Maruti Udyog Ltd. v. Ramlal & Ors., AIR 2005 SC 851; Oriental Insurance Co. Ltd. v.

Brij Mohan & Ors., AIR 2007 SC 1971; and Karnataka State Financial Corporation v. N. Narasimahaiah & Ors., AIR 2008 SC 1797).

23. The instant case requires to be examined in the light of the aforesaid settled legal propositions.

24. In the instant case, the pleadings are not sufficient to reach any conclusion on the issue of grant and issuance of the certificate.

It has not been mentioned anywhere that, certificate as required under Section 38-E(2) of the Act 1950 had earlier been granted and the dispute was raised by the respondents only at the stage of its issuance.

25. The admitted facts remain that the predecessor-protected tenant of appellant no. 1 was a tenant to the extent of half share in survey Nos. 50, 61 & 74 measuring 6 acres and 3 guntas; predecessor-protected tenant of, appellant no.2 was tenant to the extent of 1/3rd share in survey nos. 51, 52, 53 & 54 measuring 2 acres and 37 guntas. Similarly, predecessor-protected-tenant of appellant no. 3 was tenant to the extent of 1/3rd share in survey nos. 51, 52, 53 and 54 measuring 2 acres and 37 guntas. Predecessor-in-interest of the appellants, being protected tenants had been issued the ownership certificates on 31st May, 1975. The issuance of the said certificates was objected by the respondents on the ground that predecessor-in-interest of the appellant no. 2 had already surrendered his tenancy rights to the land holder Smt. Ayesha Begum in the year1958 and the respondents were in possession of the land by virtue of the decree of the Civil Court dated 24.4.1963 in favour of their father, as Smt. Ayesha Begum, original land holder did not execute the sale deed in pursuance to the agreement to sell.

26. The judgment and order of the Civil Court dated 24.4.1963 in O.S. No.5/1963 was for declaration and assertion of the name in the Record of Rights by the father of the respondents. In the trial Court, the pleadings were only to the effect that the father of the respondents/plaintiff was in possession of the suit lands since June, 1950 and the defendant was the Pattedar who had transferred all her rights of interest in the suit lands. The said defendant had agreed that she would submit application for mutation of Khata but, she did not submit any application in the Revenue department. The judgment further reveals that the defendant did not appear in spite of notice and the suit was determined ex- parte. After making reference to the issues framed in the suit, the entire judgment and order runs as under: The plaintiff in support of his case examined two witnesses Erareddy and one Jangaiah. Erareddy (PW-1) deposed that the plaintiff is cultivating the suit land for the last 15 years and the defendant during the said period never cultivated the suit lands. Jangaiah (PW-2) who has got his land near the suit lands too admits about the plaintiffs possession over the suit land for the last 15 years. Hence, the issues 1 to 3 are decided in favour of the plaintiff.

In the result, the plaintiffs suit is decreed. The plaintiffs name be inserted in record of rights as owner and passenger for the suit lands in place of the defendants name.

No order regarding costs.

27. The aforesaid judgment reveals that the trial Court had passed the decree without making reference to the pleadings; neither the pleadings in the suit nor the judgment reveals as under what circumstances the claim for ownership had been made by the father of the respondents. There is nothing in the judgment of the Civil Court as on what basis and in which year the father of the respondents got possession of the land in dispute. It does not reveal the existence of any sale deed or agreement to sell. It has not been mentioned as to whether any amount of money as a part of consideration had ever been paid to the land holder Smt. Ayesha Begum. Original Suit No. 5 of 1963 had been decreed on 24.4.1963 ex-parte, within 3-4 months from its institution. It is neither desirable nor permissible in law to make any comment on its merits, so far as the said judgment and decree are concerned. However, the manner in which the suit had been decreed is far from satisfaction.

28. The RDO vide order dated 31.5.1975 rejected the claim of the respondents in respect of alleged surrender of tenancy rights holding, that the alleged surrender by the predecessor-in- interest of the appellant no. 2 was not in conformity with the statutory provisions contained in Section 19 of the Act 1950.

29. Being aggrieved, the respondents preferred the appeal and the Appellate Authority vide judgment and order dated 22.9.1981 dismissed the appeal qua the predecessor-in-interest of the appellant nos. 1&3 and remanded the matter for inquiry as to whether the affidavit of surrender filed by the predecessor-in- interest of the appellant no. 2 was in conformity with the provisions of Act

1950.

30. Appellant Nos.1&3 filed applications before the Statutory Authority seeking restoration of possession which was challenged by the respondents by filing the writ petition no. 5381 of 2000. The High Court dismissed the writ petition vide judgment and order dated 28.4.2000 holding that the claim of the respondents, that they had purchased the suit property for a valuable consideration in the year 1955 was not acceptable and the certificate issued in favour of the predecessor-in-interest of the said appellant nos. 1 & 3 under Section 38-E(2) had attained finality. Predecessor-in-interest of the appellant no. 2 was not the party in the said writ petition. The Court dismissed the petition observing as under:

It is not the case of the petitioner that the 4th and 5th respondents also filed affidavits before the second respondent earlier. The third respondent in his proceedings dated 22.9.1981 remanded the matter to the second respondent only to the extent of enquiring into the affidavits filed by some of the Protected Tenant but not of the 4th and 5th respondents herein as they have not filed any affidavits earlier. Once that order has become final, granting of certificate under Section 38-E of the Act in their favour has also become final. Hence, they are entitled to file application under Section 32 of the Act and, therefore, the relief sought for in this writ petition cannot be granted. In that view of the matter, entertaining the applications filed by the 4th and 5th respondents herein for recovery and restoration of possession by the first respondent cannot be said to be arbitrary and illegal. (emphasis added)

31. This judgment and order of the High Court also attained finality as it was not challenged by the respondents any further.

Thus, in our view, the question of reconsideration of the validity of the tenancy certificate under Section 38-E (2) so far as the appellant nos. 1& 3 are concerned, could not arise in any subsequent proceedings whatsoever. More so, the entitlement of the said appellant nos. 1&3 to claim restoration of possession also cannot be reopened/questioned, as their entitlement to that effect had attained finality as the judgment and order of the High Court dated 28.4.2000, wherein, their right to claim restoration of possession had been upheld, was not challenged by the respondents any further.

32. On remand, the RDO vide judgment and order dated 10.5.2000 considered the case only so far as the alleged surrender by predecessor-in- interest of appellant no. 2 was concerned. The RDO, after assessing the merit of the case and examining the entire documents on record came to the conclusion that in case the predecessor-in-interest of the appellant no. 2 had surrendered the tenancy rights in the year 1954, the question of entry in the revenue record in his favour could not arise. The allegation that the respondents father had purchased the lands in the year 1962 could not be valid by any means as it was not in conformity with the provisions of Sections 47 & 48 of the Act 1950. In such a fact situation, the sale deed, if any, was void ab initio. More so, the judgment and decree of

the Civil Court dated 24.4.1963 in OS No. 5 of 1963 was not binding upon the appellants as none of them had been impleaded as a party in the suit. More so, the entitlement of the appellants nos.1 and 3 had already been examined by the Appellate Authority in its judgment and order dated 22.9.1981 which had attained finality. Thus, the issue qua the said appellants could not be reopened. So far as the alleged surrender by the predecessor-in-interest of the appellant no. 2 was concerned, it was held to be not in conformity with the statutory requirement. The Appellate Authority observed as under : The signature of Parmaiah on the affidavit is not disputed.

However, the due procedure for surrender has not been followed.

Since Sri Parmaiah and his brother Yadaiah are disputing the surrender of their P.T. Rights, they may approach the Mandal Revenue Officer, Serilingampally Mandal for taking possession of the land as per the procedure laid down in the Act/Rules.

(emphasis added)

33. The Appellate Authority dismissed the appeal against the said judgment and order of the RDO vide judgment and order dated 3.3.2001 affirming the findings of fact recorded by RDO that alleged certificate was not in consonance with the procedure prescribed under Section 19 of the Act 1950 and directed the Mandal Revenue Officer to dispose of appellants application seeking restoration.

34. In view of the above factual matrix, we are of the considered opinion that it was not permissible for the High Court to reopen the issue either of grant or issuance of tenancy certificate under Section 38-E (2) or deal with the issue of restoration of possession so far as the appellant nos. 1& 3 are concerned. At the most, the High Court could proceed in the case of the appellant no. 2.

35. Admittedly, Smt. Ayesha Begum, the original land holder, had 127 acres of land. The claim of the appellants was valid and maintainable in view of the provisions of 37-A of Act 1950.

The High Court was not justified in observing that as the issue of restoration of possession remained pending before the authority for about nineteen years, the respondents were justified in getting adjudication of their rights regarding issuance of certificate as it had not reached the finality.

Mere pendency of proceedings before the Court/Tribunal cannot defeat the rights of a party, which had already been determined.

The High court ought to have appreciated that proceedings were only in respect of execution of the orders, which had already been passed. Thus, proceedings were for the consequential relief. The issue of restoration of possession is to be decided under Section 32 of the Act, 1950. Question of application of the provisions of Section 35, ought to have been raised in the first round of litigation. Such an issue is required to be agitated at the very initial stage of the proceedings and not in execution proceedings. The said issue in respect of appellant nos. 1&3 had already attained finality. More so, if in the Tenancy Registers of the relevant years, the names of the predecessors of appellants were recorded as tenants, the High Court could not have opened the issues of factual controversies at all.

36. The judgment and order of the High Court dated 28.4.2000 passed in Writ Petition No.5381/2000 makes it clear that in the said writ petition also, the issue of entitlement of the appellants for restoration of possession had been dealt with and a specific finding had been recorded on that count. The Court has observed as under: It is not the case of the petitioner that the 4th and 5th respondents also filed affidavits before the second respondent earlier. The third respondent in his proceedings dated 22.9.1981 remanded the matter to the second respondent only to the extent of enquiring into the affidavits filed by some of the protected tenants but not of the 4th and 5th respondents herein as they have not filed any affidavits earlier. Once that order has become final, granting of certificate under Section 38-E of the Act in their favour has also become final. Hence, they are entitled to file application under Section 32 of the Act and, therefore, the relief sought for in this writ petition cannot be granted. In that view of the matter, entertaining the applications filed by the 4th and 5th respondents for recovery and restoration of possession by the first respondent cannot be said to be arbitrary and illegal.

37. In view of the above, it was not permissible for the High Court to re-open the issue in respect of all the appellants as to whether they were entitled for making the applications for restoration of possession. There can be no doubt that once a protected tenant gets a certificate of ownership under Section 38-E(2) of the Act 1950, he has a right to apply for restoration of possession to him if he has been dispossessed. The protected tenant has a right to ask for summary eviction of trespasser.

38. The High Court ought to have taken into consideration as under what circumstances the respondents had been claiming their right to object to the grant of certificates to the appellants and, as to whether the alleged sale deed which had never been produced in any Court, and which was admittedly in contravention of Section 47 of the Act, could give any cause of action to the respondents as, the transaction itself remains inconsequential and ineffective rather, void ab initio. The respondents also could not explain as since what date or year they had been in possession of the land in dispute. Before the RDO, the case of the respondents was that they had been in possession of suit land in pursuance of decree of Civil Court dated 24.4.1963 passed in OS No.5/1963. The Order of the RDO reveals that the respondents had claimed before him that they were in possession of the suit land since Ist June, 1950. The High Court in its judgment in paragraph 4 has taken note of the pleadings taken by the respondents that they had purchased the suit land from original pattedar Smt. Ayesha Begum in the year 1954. However, it is not stated therein, that they had been put in possession of said land. In paragraph 5 of impugned judgment, the High Court has further taken

note of the pleadings taken by respondents that Smt. Ayesha Begum, the original land holder offered to sell the entire land to the father of the respondents in the year 1962 and it was so purchased by him for valuable consideration. From the order dated 22.9.1981 of Appellate Authority, it is evident that the pleadings before Appellate Authority had been that the respondents were in continuous possession of suit land measuring 17 acres and 20 guntas since last 50 years. The pleadings taken by predecessor-in-interest of the respondents in earlier writ petition no.5381/2000 decided on 28.4.2000 had been that they purchased the said land in the year 1955, for valuable consideration. While deciding the case after remand, the RDO in its judgment and order dated 10.5.2000 has taken note of the pleadings taken by respondents that the father of the respondents purchased the said land from Smt. Ayesha Begum in the year 1965.

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. More so, at the time of argument it was pointed out that respondents have entered into compromise with appellant no.3 in the year 2003 and a rectification deed had been prepared.

This is an indication that no valid title had ever passed in favour of respondents, otherwise there was no occasion for them to enter into a compromise with appellant no.3. In such a fact-situation the court is under an obligation to do substantial justice even if there are some technical points involved in the case. The Act 1950, being beneficial legislation is to be construed liberally and rights of the tenants are required to be protected.

39. In view of the above, the appeal stands allowed and the judgment and order of the High Court is set aside. No costs. I.A. Nos.4/2007 and 8/2009

40. Both the applications for substitution of legal representatives/lateral descendants of deceased appellant No.1-Edukanti Kistamma; and deceased Lr.No.iv of deceased appellant no.2 are allowed.