

SUPREME COURT OF INDIA

B.Bal Reddy

Vs.

Teegala Narayana Reddy & Ors.

C.A.No.7996 of 2016

(T.S.Thakur,CJI., R.Banumathi and Uday Umesh Lalit,JJ.,)

12.08.2016

JUDGMENT

Uday Umesh Lalit,J.,

SLP(Civil) No.3438 of 2011

1. Leave granted. These appeals challenge the judgment and order dated 06.08.2010 passed by the High Court of Judicature at Andhra Pradesh at Hyderabad in Civil Revision Petition No.4904/2006 and in Civil Revision Petition Nos.447 of 2007 and 448 of 2007 which were disposed of on the same date in terms of the judgment and order in Civil Revision Petition No.4904 of 2006. Since the High Court had considered Civil Revision Petition No.4904 of 2006 as the lead matter, the appeal arising therefrom is also taken as the lead matter by us.

2. One Teegala Shivaiah was a Protected Tenant in respect of agricultural lands bearing Survey No.359(old) corresponding to Survey No.121(new) situated at Koheda Village (hereinafter referred to as the said land). Wasool Baqui as regards the said land for the year 1954 and certificate under Sections 35 and 37 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the "Act") record the name of Teegala Shivaiah as Protected Tenant. The fact that said Teegala Shivaiah was a Protected Tenant is not disputed. The respondents are the heirs and successors of said Teegala Shivaiah who died sometime in the year 1964.

3. The land holders who were recorded owners of the said land sold the said land to various buyers who in turn further effected sales and now appellants claim to be having ownership rights in respect of the said land. Various sale deeds are produced on record to prove the chain of transfers which are not being gone into presently and we proceed on the footing that those deeds in respect of the said land are in favour of the appellants.

4. Though the Protected Tenant had died sometime in 1964, the respondents moved an application under Section 40 of the Act before the Deputy Collector and Mandal Revenue

Officer in the year 2001 praying for grant of Succession Certificate in their favour. The notices were thereafter issued to interested persons and the Deputy Collector and Mandal Revenue Officer, Hayathnagar Mandal Ranga Reddy District by his order dated 27.04.2004 granted Succession Certificate in respect of the said land in favour of the respondents.

5. Soon thereafter the respondents filed an application under Section 32 of the Act for restoration of possession of the said land. Notices were issued to the appellants and in proceedings initiated thereafter the Deputy Collector Mandal Revenue Officer, Hyathnagar Mandal Ranga Reddy District by his order dated 13.07.2004 directed restoration of the said land and that the physical possession be handed over to the respondents. Pursuant to the aforesaid order dated 13.07.2004, possession was restored in favour of the respondents on 30.08.2004.

6. The appellants preferred appeals challenging the aforesaid orders dated 27.04.2004 and 13.07.2004. By a common order dated 22.07.2006, the Joint Collector-II, Ranga Reddy District allowed these appeals. As regard the locus standi of the appellants to challenge the aforesaid orders, it was held that the appellants were neither the original land holders nor the Protected Tenants and as such had no locus standi in the matter. Even after recording such finding, the Joint Collector-II Ranga Reddy District proceeded to consider merits of the matter. It was observed that though Teegala Shivaiah was the Protected Tenant in respect of the said land, the proceedings granting succession in favour of the respondents were not sustainable as there was no evidence about subsistence of protected tenancy as on the date when the Protected Tenant died and that since long time had elapsed since his demise, succession could not be determined. It was also held that Mandal Revenue Officer was not competent to recognize succession to tenancy.

7. The respondents preferred Civil Revision Petition No.4910 of 2006 in the High Court of Judicature, Andhra Pradesh at Hyderabad against the aforesaid order dated 22.07.2006 setting aside the order of Mandal Revenue Officer dated 27.04.2004 granting succession certificate. Said Revision Petition was dismissed by the High Court on 08.12.2006 at the admission stage by passing following order:-

“There is no dispute nor denial that under Section 40 of the Andhra Pradesh (Telangana Area) Tenancy & Agricultural Lands Act,1950, (the Act, for brevity), the jurisdictional Mandal Revenue Officer cannot grant succession to the persons claiming to be the lineal descendants to a protected tenant. In that view of the matter, order of the Joint Collector dated 22/07/2006 impugned in this Civil Revision Petition in so far it relates to setting aside the order of the Mandal Revenue Officer 27/07/2004 passed under Section 40 of the Act does not warrant any interference. The Civil Revision Petition is accordingly dismissed. No costs”

8. The respondents had also preferred Civil Revision Petition No.4904 of 2006 against the order dated 22.07.2006 by which order granting restoration was set aside. This Revision Petition was allowed by the High Court vide its judgment and order under appeal. The High

Court observed that transaction of sale by the original land holders in favour of third parties of agricultural land under the holding of a Protected Tenant was contrary to provisions of Section 38-D of the Act and as such the appellate authority had rightly found that the present appellants had no locus standi in the matter. It was further observed that there was no evidence to show that the Protected Tenant had ever surrendered his protected tenancy or that he was evicted under Section 19 of the Act and as such the protected tenancy would continue despite the death of Protected Tenant and the rights in that behalf devolved on the successors. Relying on the decision of the Full Bench of Andhra Pradesh High Court in *Sada v. Tehsildar*¹ it was held that no limitation or adverse possession could be raised against the protected tenancy. It was further observed that the respondents being legal heirs and lineal blood descendants of the Protected Tenant, they were entitled to seek restoration of possession. With this view, the High Court allowed Civil Revision Petition No.4904 of 2006 and restored the order dated 13.07.2004. Similar orders were passed restoring orders granting possession in respect of Civil Revision Petition Nos.447 of 2007 and 448 of 2007.

9. The appellants being aggrieved have preferred these appeals by special leave. We heard Mr. Dushyant A. Dave, learned Senior Advocate in support of the appeal and Mr. Jaideep Gupta, learned Senior Advocate for the respondents.

10. Section 38-D of the Act prescribes the procedure to be followed when land holder intends to sell the land held by a Protected Tenant. Accordingly the land must first be offered by issuing a notice in writing to the Protected Tenant and it is only when the Protected Tenant does not exercise the right of purchase in accordance with the procedure, that the land holder can sell such land to any other person. The effect of this provision and non-compliance thereof was considered by this Court in *Kotaiah v. Property Assn of Baptist Churches (PVT.) LTD*². and it was laid down:-

“(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.”

11. It is not the case of the appellants that alienations effected by the landholders were in conformity with aforesaid provision. The appellate authority was therefore right in holding that the present appellants had no locus standi. It, however, erred in considering the merits of the matter despite having rendered such a finding on the issue of locus standi. In our view all transactions entered into without following the procedure prescribed in Section 38-D of the Act are without any legal effect as held in *Kotaiah*'s case (supra).

12. It is well settled that the interest of a Protected Tenant continues to be operative and subsisting so long as 'protected tenancy' is not validly terminated. Even if such Protected Tenant has lost possession of the land in question, that by itself does

not terminate the ‘protected tenancy’ . The observations of the Full Bench of Andhra Pradesh High Court in Sada’ s case (supra) which were quoted with approval by this Court in *Boddam Narsimha v. Hasan Ali Khan*³ are quite eloquent.

“44. In our view, this contention is not correct. If a protected tenant is already in physical possession on the date of notification there is no problem at all. If proceedings under Sections 19, 32 or 44 are pending, the date of vesting gets itself postponed. If the ‘protected tenancy’ stood validly terminated by the date of notification under Sections 19, 32 or 44, in that case, no certificate at all can be issued. But, as long as a person continued to be a ‘protected tenant’ either under Sections 34, 37 or 37-A, as per the Act and has not lost that status, whether he is in actual possession or not on the date of notification, and is also to be ‘deemed’ to be in possession under the first part of the Explanation subject to Section 32(7) and the proviso to Section 38-E(1), the ownership stands transferred straightway to such protected tenant by the very force of Section 38-E(1). Further, Section 38-E(2) read with the A.P. (T.A.) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 contemplates a full-fledged inquiry after notice to the landholders or after hearing objections of any other interested person (vide Rules 4, 5). Once a certificate is issued, the same is, under Section 38-E(2), ‘conclusive evidence’ of the ownership of the protected tenant, and cannot be defeated by the result of any inquiry under second part of the Explanation to Section 38-E. Another reason for this view is that the inquiry under Section 38-E(2) read with the Rules of 1973 referred to above, is to be done by the Tribunal (the Revenue Divisional Officer) and obviously his decision to grant the ownership certificate will not and cannot be jeopardised by the result of any inquiry by a subordinate official like the Tahsildar, who deals with the granting of possession to a ‘protected tenant’ .”

13. It is not the case of the appellants that the Protected Tenancy of Teegala Shivaiah was terminated in a manner known to law. In the absence of such valid termination of ‘protected tenancy’ , the interest of such Protected Tenant continued to be operative and subsisting in law and could devolve on his legal heirs and representatives who could then claim restoration of possession. As laid down in Sada’ s case (supra) even if the Protected Tenant had lost possession, without there being valid termination of his status as a Protected Tenant, he would still be entitled to all incidents of protection under the Act. In the aforesaid premises, the view taken by the High Court in allowing Civil Revision Petitions in favour of respondents herein was perfectly right and justified.

14. We thus see no merit in the present appeals which are dismissed with costs quantified at Rs.25,000/- in each of the appeals to be paid by the appellants to the respondents i.e. the heirs and legal representatives of the Protected Tenant.

Judgment Referred.

¹AIR (1988) AP 77=1987 (2) ALT 749 (FB)

²(1989) 3 SCC 0424
³(2007) 11 SCC 0410