

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION No.17811 OF 2004

Between:

Abdul Gaffar.

....Petitioner

And

The Joint Collector, R.R District and others.

....Respondents

DATE OF JUDGMENT PRONOUNCED:20.08.2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.17811 OF 2004

ORDER:-

This writ petition is filed by the petitioner challenging the order dated 05.06.2004, passed by the 1st respondent- Joint Collector, Ranga Reddy District, in Case No.F1/6288/1994, whereby the appeal filed by the petitioner herein under Section 24 of A.P. (T.A) Abolition of Inams Act, 1955 (for short "the Act") against the Occupancy Rights

Certificate No.D/118/91 dated 30.07.1991 issued in favour of the respondents 3 to 5 herein in respect of the lands bearing Sy.No.492 in an extent Ac.0.36 gts and 493 in an extent Ac.0.28 gts situated at Kankal Village, Pudur Mandal, Ranga Reddy District, was dismissed.

The case of the petitioner, in brief, is that his father by name Abdul Nabhi was recognized as a 'protective tenant' over the lands in an extent of Ac.0.36 guntas in Sy.No.492 and Ac.0.28 guntas in Sy.No.93 of Kankal Village, Pudur Mandal, Ranga Reddy District. Thereafter, on the demise of the petitioner's father, the petitioner submitted an application on 3.9.1981 to the Tahsildar, Pargi, under Section 40 of the Hyderabad Tenancy on Agricultural Lands Act, 1950, for sanction of succession. The Tahsildar, Pargi, after enquiry, passed an order on 25.04.1982, sanctioning the succession of late Protected Tenant Sri Abdul Nabi, S/o. Khan Mohammed in favour of the petitioner herein over the land bearing Sy.Nos.492, 516 and 571 in extents of Ac.0.36 gts, Ac.1.06 gts and Ac.8.12 gts, Kankal Village, Pargi Taluk, Ranga Reddy District.

Thereafter, when respondents 3 to 5 dispossessed the petitioner from the above said lands, the petitioner submitted an application to the Tahsildar, Pargi, under Section 32(1) of the Hyderabad Tenancy on Agricultural Lands Act, 1950, for restoration of his possession in respect of the lands bearing Sy.Nos.492, 516 and 571 in extents of Ac.0.36 gts, Ac.1.06 gts and Ac.8.12 gts, Kankal Village, Pargi Taluk, Ranga Reddy District. The Tahsildar, Pargi, after his elaborate enquiry, through his order dated 20.05.1983, ordered restoration of possession of the petitioner's lands. Pursuant to the order dated 20.05.1983, of the Tahsildar, Pargi, the Mandal Revenue Inspector and the V.A.O, Pargi, conducted panchanama in the presence of the panchas and handed over possession of the land to the petitioner on 14.06.1993, and since then, the petitioner has been in possession and enjoyment of the same. Questioning the said handing over the

possession of the lands to the petitioner, respondents 3 to 5 filed a suit in O.S.No.20 of 1993 on the file of the District Munisiff, Pargi, Ranga Reddy District, and obtained an *exparte* injunction order on 25.06.1993 in I.A.No.54 of 1993. Thereafter, the *exparte* injunction order was vacated on 21.02.1994 based on the panchanama dated 14.06.1993, held by the Mandal Revenue Inspector and V.A.O, Pargi. Later, the main suit itself also came to be dismissed for non-prosecution. It is stated that the petitioner, for the first time, came to know about granting of Occupancy Rights Certificate in favour of respondents 3 to 5 through the averments in the suit. Therefore, questioning the said granting of Occupancy Rights Certificate for the above said lands, the petitioner filed an appeal before the Joint Collector, Ranga Reddy District under Section 24 of the Act as against the Occupancy Rights Certificate No.D/118/91 dated 30.07.1991 issued in favour of respondents 3 to 5 herein, and after its enquiry, the Joint Collector dismissed the same by an order dated 5.6.2004. Aggrieved thereby, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Revenue (Telangana Area) and perused the material placed on record.

In spite of the notices having been served, there is no representation on behalf of respondents 3 to 5.

Learned counsel for the petitioner has strenuously contended that the factum of sanctioning the succession of late Protected Tenant Sri Abdul Nabi, S/o. Khan Mohammed in favour of the petitioner is not in dispute and the grant of protective tenancy certificate with respect to the above said lands itself would go to show that the petitioner was in possession and enjoyment of the lands in question.

On the other hand, respondents 3 to 5 admittedly came to

purchase the said lands from one Smt Yeshodamma, who was recorded as possessor/cultivator in the revenue records for the years 1983-84 and 1988-89. The revenue records reveal that the pahanies for the years 1973-74, 1983-84 and 1988-89, reveal the name of one Sri Rama Rao as the Inamdar/Maqthedar. Learned counsel for the petitioner further submits that the Joint Collector, Ranga Reddy, did not enquire into the fact as to who was in possession on the crucial date i.e., on 01.11.1973, for the purpose of granting Occupancy Rights Certificate, as required under the Act. In that view of the matter, the learned counsel for the petitioner submits that granting of occupancy rights certificate in favour of respondents 3 to 5, is unsustainable and the matter requires to be remanded back to the authorities for determining as to who was in possession as on the crucial date.

On the other hand, learned Assistant Government Pleader for Revenue (Telangana Area), supports the order of the Joint Collector and submits that there is a categorical finding given by the Joint Collector and it is only after considering the orders of the lower authority, the Joint Collector, Ranga Reddy, dismissed the appeal of the petitioner and confirmed the order dated 30.07.1991 passed by the Revenue Divisional Officer, Vikarabad, and prays for dismissal of the writ petition.

Having considered the rival submissions and having perused the material available on record particularly the order impugned, the crucial aspect that needs to be considered is as to whether respondents 3 to 5 are said to have been made out a case for granting occupancy rights certificate in their favour on the ground that they were in possession of the above said lands as on the crucial dates i.e., 01.11.1973. The Joint Collector based on the record and having perused the orders of the lower authority had recorded a finding that one Sri Rama Rao was recorded as Inamdar/Maqthedar and for the period 1973-74, 1983-84 and 1988-89, the possession column is

showing the name of one Smt Yeshodamma as possessor/cultivator. Smt Yeshodamma was found to be the mother of Sri Rama Rao. Merely because in the impugned order, it has been stated that "Smt Yeshodamma who was recorded as possessor of the land in question is stated to be mother of the said Sri Rama Rao", no presumption can be drawn by the Court that Smt Yeshodamma was not the mother of Sri Rama Rao. At any rate, there is no challenge before the Joint Collector that the Smt Yeshodamma was not the mother of Sri Rama Rao who was admittedly and undisputedly the Inamdar/Maqthedar of the land in issue. It is also not in dispute that Smt Yeshodamma was one who was entitled to be granted the occupancy rights certificate and as respondents 3 to 5 came to purchase the land through the Smt Yeshodamma, they were entitled to be granted occupancy rights certificate and the same was rightly granted in favour of respondents 3 to 5. The learned Joint Collector has taken into consideration the fact that under Section 102 of A.P. Telanagana Area Agricultural Tenancy Act, 1950, the protected tenants rights are not applicable to Inamdar lands. In other words, the fact that obtaining the protected tenancy certificate by the father of the petitioner and the petitioner being recognized as the legal heir of the protected tenant are of no consequence and as no bearing in deciding the matter of occupancy rights certificate under the Act.

Though strenuous effort was made by the learned counsel for the petitioner to persuade this Court to take a contra view, in the absence of any challenge to the specific finding that as per the revenue records, the petitioner was never found in possession and cultivation of the subject land at any time, the question of the petitioner being entitled to claim for occupancy rights certificate, does not arise. In that view of the matter, even for arguments sake, one to consider that respondents 3 to 5 are not entitled to be granted occupancy rights certificate so far as the petitioner is concerned, he would have no right to challenge the

same on account of the petitioner himself not being entitled to claim such occupancy rights certificate. The challenge to the order is being made with a prayer to issue a writ of certiorari, in the absence of the jurisdictional error in granting occupancy rights certificates in favour of respondents 3 to 5 and in the absence of any allegation that there is any violation of the principles of natural justice, the writ petition is liable to be dismissed.

In the result, the writ petition is dismissed. No order as to costs.

Miscellaneous Petitions, if any pending in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:20.08.2015.

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No.17811 OF 2004

Date:20.08.2013

Gk.