

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.30835 of 1998 & 17939 of 1999

Date :31.3.2015

Between :

Challa Raghava Rao @ Raghavaiah

S/o Pullaiah aged 50 yrs

R/o Kuppenakuntla village,

Penuballi mandal, Khammam district and another

... Petitioners

and

The Joint Collector, Khammam district and others

... Respondents

The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.30835 of 1998 & 17939 of 1999

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COMMON ORDER :

In both the writ petitions the order of the Joint Collector in C4/(M)/1/89 dated 24.07.1998 is under challenge. By the said order the Joint Collector, rejected the claim of the applicants for restoration of possession holding that they are not protected tenants. However, the Joint Collector held that as per the patta granted to the appellants, the total extent of land was Ac.11.18 guntas, out of which they have sold Ac.7.20 guntas, they are in possession of Ac.1.20 guntas only and thus, Ac.2.18 guntas is falling short of their entitlement. He therefore directed the Mandal Revenue Officer, Penuballi Mandal, Khammam District, to demarcate the balance area of Ac.2.18 guntas in Sy.No.136 of Kuppenakuntla village and restore the same to the appellants by evicting the occupants. Said order is passed in an appeal filed by petitioners in W.P No. 17939 of 1999 against order of Mandal Revenue Officer refusing to restore possession of land to an extent of Ac.6.18 guntas under Section 32 of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short the Act, 1950).

2. The petitioners in W.P.No.30835 of 1998 challenges the order of the Joint Collector to the extent of directing the Mandal Revenue Officer, Penuballi, to evict

the occupants of land to an extent of Ac.2.18 guntas and to restore possession to the appellants.

3. In W.P.No.17939 of 1999 the petitioners challenge the order denying the possession to an extent of Ac.6.18 guntas as originally claimed by them. They also challenge the finding given by the Joint Collector that the appellants are not protected tenants.

4. For the sake of convenience, facts in W.P.No.30835 of 1998 are considered. The parties are referred to as arrayed in this writ petition.

5. By way of sada sale deed dated 01.04.1962 the 1st petitioner purchased Ac.4.00 in Sy.No.136 of Kuppenakuntla village in the name of his brother Challa Gopaiah from Anumolu Chinna Badraiah. The Patta holder by name Sri Narayana was a witness to the said transaction. In the same survey number another Ac.4.00 was purchased by way of Sada sale deed dated 12.05.1963 by the 1st petitioner in his name. The possession was given to them. Pursuant to the said purchase both brothers were in possession and enjoyment of the said lands. In the internal family settlement, both the brothers have exchanged their respective extents i.e., land covered by sale deed dated 01.04.1962 was given to Raghava Rao @ Raghavaiah and land which was originally purchased in the name of Raghavaiah on 12.05.1963 was given to Challa Gopaiah.

6. While so, on 13.06.1987 the 3rd and 4th respondents filed applications before Mandal Revenue Officer (2nd respondent herein) claiming that they are protected tenants and the subject land was in unauthorised and illegal occupation by some other persons and sought for restoration of possession in accordance with the Act, 1950, to an extent of Ac.6.18 guntas. The said application was dismissed by the Mandal Revenue Officer, Penuballi, Khammam District, on 18.11.1987. Aggrieved thereby they preferred appeal before the Joint Collector, Khammam which was numbered as C.M.A.No.01 of 1988 . The said appeal was dismissed by order dated 26.07.1988. In W.P.No.8284 of 1989 the said decision of the Joint Collector was challenged before this Court. The Writ Petition was disposed of by order dated 25.03.1997. This Court remitted the matter to the Joint Collector directing him to re-enquire keeping in mind the provisions of Section 38 (E), 48 (A), 90 and 91 of the Tenancy Act. On remand, by order dated 24.07.1998, the appellate

authority passed orders which is impugned in these writ petitions.

7. Heard Sri R.Venkateshwar Rao for Sri P.V.S.S.S.Rama Rao appearing for petitioners in W.P. No. 30835 of 1998, Sri M.V.Durga Prasad learned counsel appearing for petitioners in W.P.No. 17939 of 1999/ respondents 3 to 5 in W.P. 30835 of 1998, Sri T.S. Anand for third respondent in W.P.17939 of 1999 as well as learned A.G.P for Revenue.

8. Learned counsel for the petitioners Sri R.Venkateshwar Rao for Sri P.V.S.S.S Rama Rao contends that the applications filed by the respondents 3 to 5 was for restoration of possession in accordance with the Tenancy Act claiming that they are protected tenants. The Joint Collector held that they are not the protected tenants and they are patta holders and patta was granted much before the Section 38 (E) of the Tenancy Act, came into force and since patta was granted long ago, the provisions of the Tenancy Act are not attracted. Having held so, he ought not to have dealt with the interse dispute with reference to the ownership and possession. He therefore, contends that the order of the Joint Collector under challenge to that extent is liable to be set aside as without jurisdiction and competence.

9. Learned counsel further contends that the order passed by the Joint Collector offends the petitioners. The direction given by the joint Collector amounts to displacing the petitioners from the land in their possession. No opportunity of hearing was given by the Joint Collector and petitioners were not arrayed as respondents in the said appeal. The order therefore is liable to be set aside on this ground alone. The Joint Collector, extensively discusses in the order regarding the purchase made by the 1st petitioner and possession and enjoyment of the 1st petitioner. He also refers to the share held by the 2nd petitioner. Having recognised that the petitioners are in possession and enjoyment, the Joint Collector ought to have given opportunity of hearing before passing adverse order.

10. Learned counsel further contends that as noticed by the Joint Collector the transaction made in 1962 and 1963 is validated after they were impounded and on payment of proper stamp duty. Therefore, no further action can be taken once the transaction is validated. In support of his contention that once the Tenancy Act is held as not applicable, the Joint Collector has no authority to order for dispossession of the persons and for restoration of possession to the appellants therein, he also relied on the decision of this Court in **PRABHU LINGAL Vs Y. RAMAIAH AND**

OTHERS

11. Learned counsel for respondents 3 to 5 contends that the findings recorded by the Mandal Revenue Officer, as confirmed by the Joint Collector rejecting the claim of the petitioners for grant of restoration of the possession treating them as protected tenants is erroneous and contrary to the provisions of the Act and is liable to be set aside on that ground alone. He further submits that petitioners are recognized as protected tenants and once they are protected tenants they are entitled to ask for restoration of possession and denial of same was erroneous. He further contends that the Joint Collector erred in ignoring the certificate issued in favour of the petitioners by holding that such certificate is not authenticated and such certificate claims to have been issued on 7.11.1955 whereas the application under the provisions of Section 38-E came into effect from 1.1.1973 and therefore said certificate cannot be relied upon.

12. He further contends that as held by the Full Bench of this Court in **SADA Vs THE TAHSILDAR, UTNOOR, ADILABAD AND ANOTHER**, the person becomes owner of the property only when certificate as mandated by Section 38-E of the Act is granted and until such certificate is issued, he continues to be a protected tenant and therefore the rejection of the claim of the petitioners by the Joint Collector was erroneous. Learned counsel further contends that as per Form-III prescribed under the Rules, the certificate was validly issued and it is not necessary that such certificate should bear the stamp and signature of the officer concerned and when once a particular method is prescribed in the Rules or the Act, the same has to be followed. Learned counsel referring to provisions in The A.P. Rights in Land and Pattadar Pass Book Act, 1971 contends that wherever seal and signature is required, the legislature made such a provision and as the form appended to rules in this case do not prescribe the same rejection of certificate produced by petitioner on the ground that it does not contain seal and signature is erroneous, therefore the certificate produced by petitioner ought to have been accepted without raising technical objection. Learned counsel therefore contends that the order passed by the Joint Collector is erroneous and is liable to be set aside and by giving effect to the mandate of Section 32 of the Act 1950, the possession ought to have been restored to the petitioners.

13. Sri T S Anand, (learned counsel appearing for third respondent in W P No.

17939 of 1999) submits that the authenticity of the certificate was rightly considered by the Joint Collector and as the certificate do not bear the seal and signature of the officer who issued it, the same cannot be acted upon. The said certificate was marked as Ex.B1 in O.S. No. 84 of 1996 on the file of the Junior Civil Judge, Sathupally, where the authenticity of the said document was considered and rejected by the trial Court and decree was passed in favour of the plaintiffs therein who are respondents herein. Learned counsel further contends that the Revenue Records do not support issuance of such certificate and in the absence of the relevant records containing the entries of the tenancy, merely placing reliance on unauthenticated certificate, respondents 3 to 5 cannot claim as protected tenants. Therefore, question of resorting to the provisions of the Act for restoration of possession treating petitioners as protected tenants is not valid in law. He therefore submits that the Joint Collector has come to the correct conclusion and there is no error in the findings so recorded.

14. He further contends that Mandal Revenue Officer issued memo dated 10.9.1999 stating that as per the records verified from the office insofar as Survey No. 136 of Kuppenakuntala village, does not contain any entry of grant of tenancy to any person. This was also marked as Ex.A-40 in the trial Court. This document clinches the fact that Ex.B1 marked before the trial Court is not a valid document and as per the revenue records no tenancy was granted to any person including the father of petitioners in the writ petition and therefore the claim of the petitioners is not valid and writ petition deserves to be dismissed.

15. Learned Assistant Government Pleader submits that the relevant records could not be traced immediately. As per the records that are available in the office of the Mandal Revenue Officer only photocopy of the 'Druvapatram' is available which does not contain signature of the officer concerned. Along with the records, Mandal Revenue Officer is present.

16. Though this Court earlier directed for production of the records concerned, Mandal Revenue Officer expressed inability to produce records since record is not traceable. However, certificate relied upon by the petitioners as well as the memo of Mandal Revenue Officer dated 10.9.1999 stating that no such record is available to disclose grant of tenancy to any person in Survey No. 136 of the village which were

marked as exhibits in O.S. No.84 of 1996 on the file of the Junior Civil Judge, Sathupally, there is no need to prolong the issue. The Junior Civil Judge disbelieved the stand of the petitioners with reference to the claim of the petitioners as protected tenants.

17. As seen from the findings recorded by the Joint Collector, the Joint Collector holds that Section 38-E certificate is only a photo copy and the same is not visible. According to the Joint Collector said certificate does not contain the details of the village or signature of the Additional Revenue Divisional officer. He has also verified the same with the relevant records and found that as per Section 38-E Protected Tenant Register of Penuballi mandal, no protected tenants were recorded in Kuppenakuntala village. The Joint Collector also holds that the provisions of Section 38-E came into force from 1.1.1973 and therefore the question of issuing the certificate under Section 38-E prior to 1.1.1973 does not arise. Though learned counsel for petitioners seriously disputes about this finding of the Joint Collector and contends that in fact in Khammam district notification under Section 38-E (i) of the Act was issued in November, 1955, therefore by the time the certificate was issued, provisions of Tenancy Act had come into force in Khammam district, no relevant notification is produced.

18. However, as noticed from the order of the Joint Collector even assuming that there was such a notification issued in November, 1955 it loses significance, since, according to the Protected Tenancy Register maintained for Penuballi mandal, there is no entry of grant of protected tenancy to any person in Kuppenakuntala village and the memo issued by the Mandal Revenue Officer on 10.9.1999 is more categorical to state that in Survey No. 136 Kuppenakuntala village, no such certificate was issued. No other material is filed by the petitioners in support of their contention that they were declared as protected tenants and that they are entitled to protection of the Act for restoration of possession, except relying upon the so called 'Druvapatram'. I have also seen the 'Druvapatram' from the records produced by the learned Government Pleader. It is only a photo copy, nothing is visible from the said certificate. Thus, even assuming that a certificate exist as claimed by respondents 3 to 5, when the relevant entries are not visible and no other material is produced in support of their contention, claim made by the respondents 3 to 5, cannot be accepted. More particularly, when the revenue records do not support existence of such tenancy as authenticated by the Mandal Revenue Officer

by memo dated 10.9.1999. Unless a person's status as protected tenant is established, resort to Section 32 of the Act for restoration of possession is not valid. Thus, I see no error in the decision of Joint Collector on this issue.

19. This Court exercising certiorari jurisdiction cannot reappreciate the evidence nor can come to a conclusion different from the conclusion arrived at by the joint collector. It is not disputed that Joint Collector is competent to decide the matter. There is no material brought on record to dislodge the findings arrived at by the Joint Collector. The findings to the extent of this issue are neither perverse nor contrary to material available on record. Having regard to the same, in exercise of certiorari jurisdiction, this Court cannot hold the decision arrived at by Joint Collector on claim of respondents 3 to 5 as illegal.

20. On the second limb of the order, there is merit in the contention of learned counsel for petitioners. The matter before the Joint Collector was one arising out of the order passed by the Mandal Revenue Officer on the claim for grant of restoration of possession in exercise of powers under the Act, 1950 as protected tenants. The provisions of the Act 1950 are attracted only if protected tenancy exists. When once, Joint Collector holds that the petitioners before the Joint Collector are not protected tenants and are private patta owners, the Joint Collector becomes functus officio and he cannot enter into the claims of possession and enjoyment of the properties of the private individuals. He does not have competency or jurisdiction to go into the claim of the petitioners therein with reference to extent of land held by them and to say that other persons are holding land of the petitioners and land to an extent of Ac.2.18 guntas falling short of according to revenue records, respondents 3 to 5 be granted possession.

21. Learned counsel for respondent and learned Assistant Government Pleader are fair in submitting that once the Joint Collector holds that person is not a protected tenant and not entitled to protection of the Act, 1950 he ought not to have gone into the issue of rival claims of possession and extent which is purely a civil dispute.

22. Having regard to the fact that it is a civil dispute between two private persons where provisions of the Act are not attracted, the Joint Collector ought not to have gone into the other issues which are outside the scope of Act, 1950 and he has no jurisdiction to go into the same. Therefore to that extent the order is ex-facie illegal, without jurisdiction and competency and is liable to be set aside and

accordingly set aside.

23. Accordingly, to the extent indicated above, W P No. 30835 of 1998 is allowed and W.P. No. 17939 of 1999 is dismissed. No costs. Having regard to the same, miscellaneous petitions are closed.

P NAVEEN RAO,J

DATE:31.3.2015

RDS / TVK

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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