

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.12842 of 2002

Date: 15.04.2015

Between:

P.Narayana S/o. late P.Laxmaiah, Age 45 years,
Occu:Tailor, R/o.6-1-12, Old Balanagar,
Hyderabad and another.

.. Petitioners

AND

The Joint Collector, Ranga Reddy District,
Lakdikapool, Hyderabad and others.

.. Respondents

The Court made the following:

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ORDER:

Heard learned counsel for the petitioners and learned Government Pleader for Revenue (Telangana). None appeared on behalf of third respondent.

2. The case of the petitioners is that grand father of the petitioners late P.Buggaiah and succeeded by his father late P.Laxmaiah were the tenants to the extent of Ac.13.2 guntas in Sy.No.201 of Kotrepally Village, Vikarabad Mandal. Father of the petitioners was granted ownership certificate under Section 38-E of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'Act, 1950'). After demise of late P.Laxmaiah, petitioners as legal heirs succeeded to the said property. It is further case of the petitioners that Mr. Ahmed Ali filed appeal before the Joint Collector, Ranga Reddy District, under Section 90 of the Act, 1950 challenging the grant of Section 38-E Certificate in favour of the father of the petitioners. The Joint Collector, Ranga Reddy District by his order dated 30.07.1991 while observing that relevant issues were not considered by the lower authority, remanded the matter to the Revenue Divisional Officer, Vikarabad, for fresh consideration. On fresh consideration, the Revenue Divisional Officer, Vikarabad by his order dated 21.07.1994 held that petitioners were not entitled to Section 38-E certificate. On appeal preferred before the Joint Collector, he has upheld the orders of the Revenue Divisional Officer vide his orders dated 05.07.1999.

3. While so, the third respondent filed application under Section 7 of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short, 'Act, 1955') praying to issue Occupancy Rights Certificate (ORC) to an extent of Ac.13.10 guntas in the same survey number. By order dated 22.03.1999, Revenue Divisional Officer granted ORC to the third respondent. Aggrieved thereby petitioners preferred appeal before the Joint Collector. By order dated 09.10.2000, impugned in this writ petition, the Joint Collector rejected the appeal.

4. The case of the respondents is that consequence to the abolition of inams, pre-existing rights, title and interest of the inamdar or any person in occupation of inam lands stood divested and vested in the State until re-grant is made. It is further held that father of the third respondent was in occupation of the suit land on the date of vesting i.e., 01.11.1973 and in view of the provisions contained in Section 3 of the

Act, 1955, the ownership certificate granted under Section 38-E automatically got nullified. Accordingly, the order of the Revenue Divisional Officer was affirmed.

5. Learned counsel for the petitioners while referring to the provisions in Sections 34, 37, 37-A and 102 of the Act, 1950 and Section 33 of Act, 1955, submits that provisions of the Act, 1955 do not take away the rights accrued to the tenant in accordance with the provisions contained in the Act, 1950 and, therefore, the entitlement of the protected tenant for issuance of Certificate under Section 38-E of the Act, 1950 is valid and contrary decision of the Revenue Divisional Officer and the Joint Collector is illegal. In support of his contention, learned counsel placed reliance on the decision of the Division Bench of this Court in **B.Ramender Reddy and others v. the District Collector, Hyderabad District and others**.

6. Learned counsel further contended that status of petitioners as protected tenants of the land to an extent of Ac.13.10 guntas in Sy.No.201 was admitted by the Revenue Divisional Officer, Vikarabad, in the counter-affidavit filed in W.P.No.3673 of 1979. The Revenue Divisional Officer has also admitted the ownership rights granted to Sri Laxmaiah. The said writ petition was instituted by the father of the third respondent praying to grant occupancy rights certificate. He, therefore, submits that present stand of the revenue authorities holding that petitioners are not protected tenants, is not valid. Learned counsel further submits that even if the property was treated as inam land, as protected tenant, petitioners are still entitled to avail the benefits of provisions contained in Act, 1950 and, therefore, rejection of his claim opposing to grant ORC to third respondent was illegal.

7. None appeared on behalf of third respondent. This matter was heard on 09.04.2015 and since there was no appearance on behalf of third respondent, to give one more opportunity the matter was directed to be listed under the caption of 'for judgment'. Today also, when the matter is called, there is no representation on behalf of the third respondent.

8 .The Revenue Divisional Officer in the counter-affidavit filed by him in

W.P.No.3673 of 1979 which was filed by Sri Ahmed Ali, father of the third respondent herein claiming ORC on the very same extent of land, categorically stated that father of the petitioners was protected tenant as per the tenancy records concerning the said property and Certificate under Section 38-E of the Act was issued to him. Thus there is no dispute on the status of petitioners as protected tenants.

9. The Revenue Divisional Officer, and the Joint Collector have taken the view that in revenue records produced before them, the name of father of third respondent was reflected in the revenue records i.e., in possessor column as on 01.11.1973 and, therefore, he is entitled to seek issuance of ORC under the Act, 1955. It is further recorded that as per Khasra pahani for the year 1954-55, the name of Venkata Narasimha Reddy was recorded as owner to an extent of Ac.15.04 guntas and Sri Ahmad Ali and Gudu Sab are shown as possessors with equal share. In the pahanies for the year 1973-74, name of Venkata Narsimha Reddy was shown as inamdar and Smt. Sarala Devi as cultivator to an extent of Ac.1.34 guntas. Sri Ahmed Ali was shown as cultivator of the land to an extent of Ac.13.10 guntas. Pahanies for the years 1971-72, 1972-73, 1974-75, 1977-78, 1978-79, 1980-81 and 1981-82 would indicate Venkat Narsimha Reddy as inamdar and Ahmed Ali as cultivator to the extent indicated above. It was also noted that no material was produced before the Revenue Divisional Officer in support of the claim of the petitioners herein. In the appeal filed by the petitioners, the Joint Collector held that in view of coming into force of the Act, 1955, all the inams in Telangana Area have been abolished with effect from 20th July, 1955 and, therefore, the question of issuance of certificate under Section 38-E of the Act, 1955 would not arise.

10. The only issue for consideration is whether on account of coming into force of the Act, 1955 the entitlement of protected tenant to obtain Section 38-E certificate under the Act, 1950 is extinguishes?

11. This issue is no more *res integra*. Identical issue has come for consideration before the Division Bench of this Court. The Division Bench of this Court held as under:

“29. In other words, according to the Supreme Court though the inams were abolished by Act VIII of 1955, on 20th July, 1955, all the inams were vested in the Government and since there was no provision to resume the land by the Government, and the rights, title and interest of the inamdar and tenants were vested in the state except those which were saved by Section 33 of the Act and by virtue of Sec.33 the Hyderabad Tenancy and Agricultural Land Act, 1950 would continue to apply and regulate the relationship between the landlord and tenant and therefore the mutual rights and obligations of the inamdar and the tenant were not affected by the 1955 Act. ”

12. Thus, the issue of preserving of relationship between the tenant and the landlord and preserving the provisions of the Act, 1950 even after coming into force of the Act, 1955 stood concluded. Petitioners as protected tenants are entitled to issuance of Section 38-E Certificate and for restoration of possession under the Act, 1950.

13. As noticed above, the claim of the petitioners was rejected by the Revenue Divisional Officer originally under the Act, 1950 in his order dated 21.07.1994 and in the decision to grant ORC in his order dated 22.03.1999, as affirmed by the Joint Collector in the proceedings impugned in this writ petition dated 09.10.2000 only on the ground that in view of provisions of the Act, 1955, all the rights of tenant stood extinguished and, therefore, person is not entitled to grant of Section 38-E Certificate even if he is recognized as protected tenant. Such decision of the authorities under challenge is erroneous and is liable to be set aside and accordingly set aside. As a consequence to the setting aside of above orders, petitioners are entitled to restoration of Section 38-E certificate and also for restoration of the possession in accordance with Section 32 of the Act, 1950. Consequential steps shall be taken and completed within a period of two months from the date of receipt of a copy of this order.

14. Accordingly, the writ petition is allowed. There shall be no order as to costs. Miscellaneous petitions if any pending in the writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date : 15.04.2015

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