THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

Civil Revision Petition No.1213 Of 2007

JUDGMENT:

1 This Civil Revision Petition, under Section 91 of the A.P. (TA) Tenancy & Agricultural Lands Act, 1950, is filed challenging the Order, dated 06.01.2007 in Case No.D4/TA/2/99 by the Joint Collector wherein and whereby the order dated 10.12.1998 passed by the Mandal Revenue Officer, Dahagaon in Case No.A2/286/97 was confirmed.

2 The facts that led to the filing of the present revision, briefly, are as follows:

3 An extent of 17.19 guntas in Sy.No.107 of Borlakunta village of Dahegaon Mandal, Adilabad district (hereinafter referred to as the 'the property') originally belongs to one Paidi Bapu S/o Balakistu. The said Bapu had obtained permission under Section 47 of the A.P. (TA) Tenancy & Agricultural Lands Act, 1950 (hereinafter referred to as 'the Act') from the then Tahsildar, Sirpur – T, vide Proceedings No.A5/5086/61 dated 09.10.1960 for sale of the property. One Chetla Sudarsan purchased the property under a registered sale deed in the year 1961. During the family partition, the property fell to the share of Chetla Narayana i.e. petitioner herein. In the Protected Tenancy Register of the year 1951-52, one Sonelu Sakha Ram was shown as protected tenant of the property. While the things stood thus, one Sonelu Pandu i.e. third respondent herein made an application to the Mandal Revenue Officer Dahegaon Mandal under Section 32 (1) of the Act to deliver possession of the property to him. On the said application, the Mandal Revenue Officer handed over the property to said Pandu under a cover of panchanama on 23.09.1990. Aggrieved by the said proceedings, the petitioner filed an appeal before the Joint Collector under Section 90 of the Act, which was dismissed at the

stage of admission vide orders dated 02.03.1991. Feeling aggrieved by the said order passed by the Joint Collector, the petitioner preferred Civil Revision Petition No.3434 of 1991 to this Court. This Court by order dated 06.06.1996, while setting aside the orders passed by both the authorities below, remanded the matter with a direction to the Mandal Revenue Officer Dahegaon to conduct an enquiry into the matter afresh. Thereafter, the Mandal Revenue Officer Dahegaon, after conducting a detailed enquiry, passed order on 10.12.1998 in Case No.A2/286/97 holding that Sonelu Pandu is the adopted son of Sakha Ram. Feeling aggrieved by the orders of the Mandal Revenue Officer, the petitioner filed an appeal before the Joint Collector, Adilabad and the same was dismissed vide order dated 06.01.2007. Hence the present revision petition.

4 The learned counsel for the petitioner submitted that the authorities below are not competent to declare the third respondent as adopted son of Sakha Ram. He further submitted that the enquiry alleged to have been conducted by the Mandal Revenue Officer i.e. second respondent herein is not in accordance with law. He further submitted that the findings recorded by the second respondent as confirmed by the first respondent are not sustainable either in law or on facts.

5 *Per* contra, the learned Assistant Government Pleader appearing for the respondent Nos.1 and 2 submitted that under the provisions of the Act, the lower authorities are not competent to declare that the third respondent is the adopted son of Sakha Ram.

6 On the other hand, the learned counsel for the third respondent submitted that the present revision petition is hit by Section 11 of CPC. He further submitted that the second respondent passed the orders declaring the third respondent as adopted son of Sakha Ram

in pursuance of the order passed by this Court in CRP NO.3434 of 1991 and hence the present revision petition is not maintainable. He further submitted that the findings recorded by the authorities below are supported by oral and documentary evidence.

7 Basing on the rival contentions, the points that arise for consideration in this revision petition are as follows:

> ***i)*** *Whether the Mandal Revenue Officer while conducting enquiry under Section 40 of the Act is empowered to declare a person as adopted son of protected tenant?*
>
> ***ii)*** *Whether the orders passed by the authorities below are sustainable either on facts or in law?*

8 During the course of proceedings, the learned counsel for the third respondent filed a memo on 25.08.2015 which reads as under:

> "**<u>MEMO</u>**
>
> I submit that during the course of hearing of this case, this Court expressed a view that this Court can amend the earlier judgment in CRP No.3434/1991 Dt.06.06.1996. I submit this Court does not have power to amend the judgment in CRP No.3434/91. Only SLP was maintainable against the CRP No.3434/91. Now after a gap of 26 years even SLP is not maintainable.
>
> This case is barred by *res judicata*.
>
> Hence this memo.
>
> HYDERABAD
>
> Dated: 25 August 2015 COUNSEL FOR PETITIONER"

9 The learned counsel for the revision petitioner also filed reply denying the contents of the memo filed by the third respondent.

10 A perusal of the memo filed by the third respondent does not convey any meaning. Hence this Court is ignoring the said memo and inclined to proceed with the matter on merits.

11 Point Nos.1 and 2 are intertwined with each other, hence, I am inclined to address these two points simultaneously to avoid

recapitulation of the facts.

12 The first and foremost contention of the learned counsel for the third respondent is that the present revision petition is hit by Section 11 of CPC in view of the orders passed by this Court in CRP No.3434 of 1991. *Per* contra, the learned counsel for the petitioner submitted that the principles of res-judicata are not applicable to the facts of the case on hand. To substantiate the arguments, the learned counsel for the third respondent has relied on the ratio laid down in 1) ***Forward Construction Co. Vs. Prabhat Mandal (Regd.) Andheri***[1] and *2)* ***Devilal Modi Vs. Sales Tax Officer, Ratlam***[2]. Retaliating the same, the learned counsel for the petitioner has drawn my attention to ***Sri Sri Sri Jagannatha Swamy Vara, Palakonda Vs. Vana Venugopalanaidu***[3], ***Khatema Fibres Ltd Vs. State of U.P***[4] and ***K.Chinnappa Reddy Vs. The District Collector-cum-District Magistrate and Others***[5]*.* All these decisions deal with the scope of constructive *res-judicata.*

13 Let me consider the facts of the case in the light of the principle enunciated in the cases cited supra.

14 The parties to the Civil Revision Petition No.3434 of 1991 and the present revision petition are one and the same. The subject matter involved in both the revision petitions is also one and the same. The previous revision petition No.3434 of 1991 arose out of the orders passed by the Mandal Revenue Officer in handing over the property to the third respondent under the cover of panchanama dated 23.09.1990. The present revision petition is filed challenging the finding of the second respondent as confirmed by the first respondent declaring that the third respondent is the adopted of Sakha Ram. The point involved in both the revisions appears to be

one and the same, but the subtle truth is otherwise as the point involved in both the revision petitions is not one and the same in its strict sense. In order to appreciate the contention of the learned counsel for the third respondent it is not out of place to extract the relevant portion of the order dated 06.06.1996 passed in CRP No.3434 of 1991 hereunder.

> *"Considering the facts as narrated above, this Court holds that on the face of it, the Mandal Revenue Officer – respondent NO.1 committed mistake in giving two contrary findings regarding the status of respondent No.2 and therefore, the complications crippled in. Before taking any steps in the matter, respondent No.1 is directed to hold proper enquiry and to ascertain whether the claim of the respondent No.2 that he is the adopted son of deceased Sakha Ram is true or otherwise by giving opportunity to petitioner herein and pass appropriate orders in consonance with law. The entire exercise has to be completed within a period of 3 months from the date of receipt of this order by respondent No.1. If on merits, respondent No.1 comes to the conclusion that respondent No.2 is not the adopted son of deceased Sakha Ram, then the possession be restored to the petitioner."*

15 From a perusal of the above, it is manifest that this Court set aside the orders passed by the respondent Nos.1 and 2 herein and directed the second respondent to conduct enquiry afresh. Viewed from any angle, the principles of *res-judicata* are not applicable to the facts of the case on hand in general and constructive *res-judicata* in particular. The decisions relied on by the learned counsel for the third respondent have no application to the facts of the case on hand. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the third respondent that the present revision petition is hit by the provisions of Section 11 of CPC.

16 The next question that falls for consideration is 'whether the authority vested with the quasi judicial function is empowered to declare the status of a particular individual as adopted son of a

protected tenant or not'.

17 At the cost of repetition, for better appreciation of the rival contentions, this Court is inclined to refer a few facts of the case. It is an admitted fact that an extent of 17.19 guntas in Sy.No.107 of Borlakunta village of Dahegaon Mandal, Adilabad district originally belongs to one Paidi Bapu. The A.P. (TA) Tenancy & Agricultural Lands Act, 1950 contemplates certain guidelines to be followed before selling the property by the owner. In due compliance of the provisions of the said Act, Paidi Bapu made an application to the then Tahsildar seeking permission to sell the property. The then Tahsildar, vide proceedings No.A5/5086/61 dated 09.10.1960 issued certificate stating that the property in question was not mortgaged to anyone or the land was not in possession of any protected tenant. Basing on the proceedings issued by the then Tahsildar, Chetla Sudarsan had purchased the property from Paidi Bapu under a registered sale deed in the year 1961. In the family partition, the property fell to the share of Chetla Narayana i.e. petitioner herein. The petitioner and his predecessors-in-title have been in possession and enjoyment of the property up to 23.09.1990. The fact remains is that Chetla family has been in possession and enjoyment of the property for a period of 30 years. In the protected tenancy register for the year 1951-52, the name of Sonelu Shaka Ram is shown as protected tenant in respect of the land in question. Even as per the orders passed by the Mandal Revenue Officer, the name of Shaka Ram is not shown as protected tenant subsequent to 1952. Basing on the petition filed by the third respondent under section 32 (1) of the Act, the then Mandal Revenue Officer delivered possession of the property to the third respondent on 23.09.1990 under the cover of panchanama which is the genesis for two rounds of litigation before the various authorities.

18 Admittedly, the third respondent is a Hindu by birth and governed by the provisions of the Hindu law. Hindu Adoption and Maintenance Act, 1955 contemplates the procedure to be followed at the time of adoption of a boy. Chapter II of the Hindu Adoption and Maintenance Act deals with adoption. Sections 5 to 10 of the said Act postulates the procedure to be followed and the persons who are competent to give or take in adoption. In order to constitute a valid adoption, the same must satisfy the ingredients of Section 11 of the Act. When adoption of a particular person is in question, the revenue authorities have to take meticulous care and caution before giving a specific finding while exercising quasi judicial functions.

19 From a perusal of the record it is manifestly clear that complicated and complexity of questions of fact and law are involved in this matter. The lis involved has to be decided in touch stone with the provisions of the A.P. (TA) Tenancy & Agricultural Lands Act, 1950 and Hindu Adoption and Maintenance Act, 1955. It is needless to say that the provisions of the Act conferred powers on respondent Nos.1 and 2 to exercise quasi judicial functions. A quasi judicial function cannot be equated with the exercise of judicial function. The authorities vested with the power to exercise quasi judicial function, may have some traits of a civil Court, but not a civil court in letter and spirit. No doubt, the Mandal Revenue Officer is empowered to decide who is the protected tenant, who is the pattedar and other incidental questions in view of the powers vested in him by the Act. In this case, apart from tenancy rights, the question of adoption is also involved. In order to claim the property in question, the third respondent has to establish that he is the adopted son of Shaka Ram. If third respondent fails to prove that he is the adopted son of Shaka Ram, then he has no right whatsoever to claim the property. Therefore, the entire issue revolves around the question ‘whether the

third respondent is the adopted son of Shaka Ram or not.' If the answer is affirmative, automatically he is entitled to claim the property as protected tenant. If the answer is negative, he is not entitled to the relief sought for.

20 Before deciding the above issue, the Court has to address another point i.e. whether the revenue authorities, while exercising quasi judicial functions, are enjoined to declare that the third respondent is the adopted son of Shaka Ram or not. Suffice it to say, the only difference between the Civil Court and Revenue Courts is that the Civil Court is empowered to give a declaration with regard to the status of an individual. It is not the case of the third respondent that the provisions of the Act would enable the Mandal Revenue Officer to declare him as adopted son of Shaka Ram *de hors* the provisions of Hindu Adoption and Maintenance Act, 1955. The various provisions of the said Act postulate the conditions to be established in order to declare whether a particular person is an adopted son or not. A perusal of the record reveals that the Mandal Revenue Officer examined some of the persons in the village. Basing on the oral statements of the villagers, the Mandal Revenue Officer arrived at a conclusion that the third respondent is the adopted son of shaka Ram. Of course, the Mandal Revenue Officer has not considered the provisions of the Hindu Adoption and Maintenance and Adoption Act while recording the statements of witnesses recorded by him. Admittedly, the third respondent has not produced either registered or unregistered adoption deed to substantiate the stand taken by him. The Mandal Revenue Officer comes to such a conclusion on the sole ground that the third respondent performed the obsequies of late Shaka Ram.

21 A perusal of Section 40 of the Act at a glance demonstrates that the rights of a protected tenant are heritable. A protected tenant's

legitimate lineal descendants by blood or adoption are entitled to claim tenancy rights after his demise. The enquiry conducted by the Mandal Revenue Officer reveals that late Sakha Ram was having daughter and grand daughters. In the backdrop of the above factual scenario, whether the Mandal Revenue Officer is empowered to declare a particular person is the adopted son of a protected tenant while deciding the lis between pattedar and lineal descendants of the protected tenant, under Section 40 of the Act. In order to resolve the issue, this Court is placing reliance on the following decisions:

Om Prakash Agarwal Vs. The Joint Collector, Adilabad[6], wherein this Court held as under:

> "5……… The above is the order passed by the Joint Collector in appeal. On a reading of the order, it is clear that *Thadaka Pothanna* did not produce any document proof before the primary authority in support of his contention that he is the adopted son of *Thadaka Santhanna*. But, he produced Dependant Certificate for the first time before the Joint Collector. It was in that context, the Joint Collector mentioned in his order to the effect that 'he claims to be the adopted son of late *PT* but no documentary evidence has been produced in support of his claim' before the primary authority. Therefore, the contention that the Joint Collector gave contradictory findings on the issue is not correct. No doubt, the order under revision is written in a most casual and slip-shod manner without giving any proper reasons for dismissing the appeal and without recording any specific findings on the Certificate produced by *Thadaka Pothanna.* But, from the language employed in the order under revision, it can be gathered that the Joint Collector, while dismissing the appeal of the pattedar, mainly placed reliance upon the Dependant Certificate produced by *Thadaka Pothanna* and thereby disallowed the claim of the respondent, observing that he has not produced any evidence in support of his claim that the protected tenant is not legal heir of the deceased protected tenant. But, this approach of the Joint Collector is totally erroneous. It has come on record that *Thadaka Pothanna* died issueless. When it is the contention of the 2nd respondent that he is the adopted son of the original protected tenant *Thadaka Santhanna* and that after his death he is entitled to have the possession of the land under Section 40 of the Act as the heir of late *Santhanna* and when the said contention is being disputed by the pattedar, it is for the 2nd respondent to prove that he is the legal heir of the deceased protected tenant and eh is entitled to have

possession of the land under Section 40 by filing relevant documentary proof. Therefore, the burden is heavy on the 2nd respondent to prove his contention than the pattedar to disprove the same. While so, the only piece of evidence that was produced by the 2nd respondent in this case is the Dependant Certificate issued by the Mandal Revenue Officer. It is needless to say that before issuing a certificate in favour of a person who requires it, an enquiry as contemplated under the law is necessary to be conducted by the authority who issues the certificate. Under the law, i.e. under the provisions of the Hindu Adoptions and Maintenance Act, 1956, which regulates the adoption of a person who is a Hindu by religion, only the civil Court is competent to decide, in case of dispute, the question whether, there was valid adoption or not and to pass a decree accordingly. Therefore, a declaration by a competent civil Court under the Hindu Adoptions and Maintenance Act, 1956, alone is a conclusive proof to hold that a person is validly adopted son of another person. There is no provision in the said Act of 1956 which authorised the Mandal Revenue Officer to hold an enquiry and issue a certificate similar to one which is produced in this case. Thus, the 2nd respondent ought to have approached the civil Court for adjudication as to the validity or otherwise of his adoption by late *Thadaka Santhanna* and filed a decree that may be passed by such civil Court before the authority under the Act. The certificate produced by him will, therefore, have no evidentiary value so as to come to a conclusion that he is the validly adopted son of late *Thadaka Santhanna.* If the Dependant's Certificate produced by *Thadaka Pothanna* is eschewed from consideration, it should be held that *Thadaka Pothanna* failed to prove his contention. Thus, his claim for restoration of the land under the Act cannot be upheld. For these reasons, I am of the view that the Joint Collector committed a blatant error in dismissing the appeal of the pattedar. The order under revision, is therefore, liable to be set aside.

Syed Abdul Majeed and Others Vs. Joint Collector-II, Ranga Reddy District and Others[7] wherein this Court held as under:

15. Reading Section 40 of the Act and the Tenancy Rules together, it must be held that though under Section 40 of the Act, Tahsildar has no power to decide questions of succession to the protected tenancy, in the event of acquisition of rights, Tahsildar can conduct verification under Rule 14 of the Rules and order amendments in the register of mutations. Such a procedure is also contemplated under Section 4 of the A.P. Rights in Land and Pattadar Pass Book Act, 1971 and Rule 18 of the A.P. Rights in Land and Pattadar Pass Book Rules, 1989. The enquiry contemplated for amending mutation in the event of acquisition of rights either by survivorship or

succession is altogether different from adjudicating the question of succession. Even while dealing with the application for recording for amendment of entries in the mutation register, if there is a dispute by the applicant, the MRO should relegate such party to the Civil Court.

16. This Court in an unreported judgment in W.P. No. 7430 of 2000 held that the question as to who are the legal heirs of a deceased protected tenant has to be decided by a competent Court of civil jurisdiction. A similar view was expressed in another unreported judgment in W.P. No. 7018 of 2000. The decisions cited by the learned Counsel for the petitioner nowhere lay down that the Tahsildar/MRO is conferred with the power to decide questions of succession. By the very nature of enquiry involved in such application, the Tahsildar/MRO is not competent to decide questions of succession.

Rachappa (died) by L.Rs Vs. Bhumani Hanumaiah and another[8] wherein this Court held as under:

17. Accordingly, the revision petition is allowed and the matter is remanded to the Mandal Revenue Officer, Dharur Mandal, with a specific direction to issue notices to all the parties and to direct them to adduce necessary evidence. It is for the persons who are claiming to be the legal heirs of the protected tenant to adduce necessary evidence to show that they are the sons of the original protected tenant and the opposite party should be given an opportunity to lead contra evidence. After adducing evidence and after verification of the records, if it appears that complicated questions of civil nature with regard to admissibility of any document such as adoption deed or Will Deed etc., are required or the dispute is of pure civil nature then the Mandal Revenue Officer may direct the parties to approach the Civil Court for seeking necessary declaration.

22 As per the principle enunciated in the cases supra the Mandal Revenue Officer is not empowered to declare that a particular person is the adopted son of a protected tenant. All the three cases referred above arise under Section 40 of the Act. The facts of the case on hand are identical to the facts of the cases cited supra.

23 To decide the legality of the order passed by the Mandal Revenue Officer from another angle, this Court feels that it is apposite to extract the relevant portion of the order passed by this

Court in CRP No.3434 of 1991, which reads as under:

> *"………Before taking any steps in the matter, respondent No.1 is directed to hold proper enquiry and to ascertain whether the claim of the respondent No.2 that he is the adopted son of deceased Sakha Ram is true or otherwise by giving opportunity to petitioner herein <u>and pass appropriate orders in consonance with law</u>………."*

24 The above order passed by this Court clearly indicates that the Mandal Revenue Officer, while taking any steps in the matter i.e. with regard to the ascertaining the truth or otherwise of the claim of the petitioner that he is adopted son of Sakha Ram, has to follow the procedure in accordance with law. The word 'in accordance with law' as used in the previous order shall be construed in the context it is being used. In other words, the order to be passed by the Mandal Revenue Officer in pursuance of the remanding of the matter shall be inconsonance with the provisions of the Tenancy Act as well as Hindu Adoption and Maintenance Act, 1955. The central idea of the above order is that the Mandal Revenue Officer's duty is to the extent of deciding whether the third respondent is adopted son of late Sakha Ram or not basing on the documentary evidence, if any, produced by him. But it does not mean that the Mandal Revenue Officer is empowered to give a declaration so far as the status of the third respondent. The Mandal Revenue Officer has misconstrued the orders of this Court passed in CRP No.3434 of 1991 and exceeded his jurisdiction while declaring the rights of the protected tenant.

25 Viewed from factual or legal angle, the order passed by the Mandal Revenue Officer as confirmed by the Joint Collector is not sustainable in law and hence the same is liable to be set aside.

26 Before parting with the order in this revision, this Court is inclined to make some observations on the memo on 25.08.2015 filed by the learned counsel for the third respondent. This Court is very much conscious that the order passed in the earlier Civil Revision

Petition No.3434 of 1991 can only be challenged before the Hon'ble apex Court but the same cannot be amended or modified in another revision petition. However, the same can be reviewed if there is an error apparent on the face of it that too on an application to that effect is filed separately. The revisionery powers of this Court are very limited. Therefore, this Court is leaving it to the wisdom of the third respondent without making any comment on it.

27 In the result, the Civil Revision Petition is allowed, setting aside the order, dated 06.01.2007 passed in Case No.D4/TA/2/99 passed by the Joint Collector confirming the order dated 10.12.1998 passed by the Mandal Revenue Officer, Dahagaon in Case No.A2/286/97. However, dismissal of this revision does not preclude the third respondent to approach the appropriate forum for redressal. No order as to costs. As a sequel, miscellaneous petitions if any pending in this revision petition shall stand closed.

T. SUNIL CHOWDARY, J.

Date:18-09-2015
Kvsn

[1] AIR 1986 SC 391
[2] AIR 1965 SC 1150
[3] 1995 (2) ALD 632 (D.B)
[4] (2001) 1 SCC 458
[5] 1995 (1) ALD 286 (D.B)
[6] 1997 (5) ALD 316
[7] 2006 (5) ALD 348
[8] 2011 (4) ALD 212