

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4791 of 2015

ORDER:

The revision petitioners 1 to 3 are the unsuccessful appellants before the learned Joint Collector-II, Ranga Reddy District, vide appeal order dated 17.08.2015 in case No.F2/ 4690/ 2013 maintained against the revision respondents 1 and 2. The appeal was maintained under Section 91 of the Andhra Pradesh (T.A) Tenancy & Agricultural Lands Act, 1950 (for short 'the Act'), aggrieved by the order dated 18.07.1990 in File No.B/ 684/ 1990 of the Mandal Revenue Officer (for short 'the M.R.O.), Kulkacharla Mandal of Ranga Reddy District.

2. The contentions in the grounds of revision under Section 92 of the Act are that the impugned order of the learned Joint Collector dated 17.08.2015, confirming the order passed by the revision 3rd respondent-Tahsildar (M.R.O), Kulkacharla Mandal, dated 18.07.1990, that too without intimation about the date of pronouncement by the Joint Collector after reserving the matter is contrary to law, that another case in File No.G/ 776/ 2011 filed by the respondents 1 and 2 on the file of the Revenue

Divisional Officer, Chevella Division for granting patta certificate for the self same lands is pending and the revision petitioners on came to know of it only on 04.10.2015, about disposal of the impugned appeal order by the Joint Collector dated 17.08.2015, when consulted their counsel, who approached the Joint Collector and when intimated about non-service by filing memo, Joint Collector furnished copy of the order dated 17.08.2015 on 13.10.2015 and maintained the revision there from within time. The impugned order of the Joint Collector is contrary to law and contrary to merits of the case and evidence on record and vitiated by non-consideration of evidence on record. The 3rd respondent-M.R.O. passed a mechanical and cyclostyled order without discussion of the material on record and without considering the facts and about existence of the tenancy rights of respondents 1 and 2 herein. The tenancy register amended only in view of the impugned order passed by the M.R.O. dated 18.07.1990. Thus, neither the ancestors of the respondents 1 and 2 nor the respondents 1 and 2 are the protected tenants for Ac.9.11 guntas of Survey No.45 or 45/ A by sub-division and as the order of the M.R.O. dated 18.07.1990 since passed without notice to the petitioners respective

husbands, who were alive by then, being the legal heirs of one Jairam. The order passed by the M.R.O/ Tahsildar(3rd respondent) is a nullity for violation of principles of natural justice for non-issuance of notice to them; and even same was urged before the lower appellate authority, the Joint Collector failed to consider the same and other merits of the case viz., the father of respondents 1 and 2 by name, Kummari Laxmaiah got other legal heirs, who were not even made as parties and Khasra Pahani of 1954-55 show legal heirs of Yellappa have equal shares in the lands as owners but not even as tenants and the cyclostyled order of the M.R.O. thereby is merit less and mechanical outcome and without jurisdiction to pass orders of succession assuming the powers of civil Court and even Section 40 of the Act, no way authorized the M.R.O. to pass orders of succession and the M.R.O. has no right while recognizing right under Section 40 of the Act, to issue fresh P.T.Certificates. It is the submission that all the points were urged before the learned Joint Collector (appellate tribunal), who failed to consider the same and hence the impugned order is unsustainable and that too when respondents 1 and 2 did not state as to when their father died and upto what time they have been in

possession of entire land of Ac.18.13 guntas in Survey No.45 and as to when they were dispossessed by the revision petitioners or their husbands and even in the counter of them before the lower appellate authority no particulars mentioned. It is the further submission that even the order of the 3rd respondent-MRO was with no particulars, the learned Joint Collector, ignoring all these simply stated that the M.R.O. has seen the files and found P.Ts and notices issued to the concerned (without mentioning as to whom notices issued). The observation of the Joint Collector that revision petitioners as appellants have not proved their alleged claim and they were non-vigilant and having slept over for extra-ordinary length of time is unsustainable, when they maintained immediately after knowledge, for not served with notice by the M.R.O. before passing the orders covered by the proceedings and on knowledge only when they approached and maintained the appeal and the question of non-vigilance to so hold does not arise and even respondents 1 and 2 did not file any documents to show their possession much less on the date of their application in the year, 1990 or even date; even to say that they have dispossessed there is no basis, they did not even state when their father was

dispossessed and by whom and in what manner; the appellate Authority having given a go-bye to all the facts in controversy and mechanically dismissed the appeal on irrelevant considerations and thereby the impugned order of the Joint Collector is to be set aside and the revision is to be allowed.

3. Whereas, the learned counsel for the respondents 1 and 2 submits that the impugned order of the Joint Collector no way requires interference by sitting in revision for the same is a well considered one and the fact that Survey No.45 of a total extent of Ac.18.13 guntas situated at Salveed Village of Kulkacharla Mandal of Ranga Reddy District, originally held by one Bheemsen Rao S/o Kondal Rao not in dispute, so also he died left behind him, his sons, Narsimha Rao and Ananthapadmanabha Rao. So far as claim of the revision petitioners, in claiming through their late husbands for said land there is no basis. The respondents' father late Laxmaiah alone was the protected tenant and was recorded as such in the P.T.Register; pursuant to which, the respondents obtained succession under Section 40 of the Act, since the protected tenancy rights are heritable to the legal heirs. The M.R.O. in the proceedings dated 18.07.1990 having considered the material sanctioned

the succession in their favour, as sons of the protected tenant late Laxmaiah by incorporation of the same in the P.T.Register and once such is the case, their petition for restoration of possession under Section 32 of the Act is sustainable and thereby the M.R.O. allowed the same on 29.05.1995 and they took possession under the cover of Panchanama and since then they are in uninterrupted possession and the petitioners filed petition vis-à-vis the appeal before the Joint Collector suppressing all the facts and the claim that along with Laxmaiah there are other protected tenants i.e., Pentaiah S/o Yellappa and Bheemaiah S/o Eeraiah is false and Laxmaiah was alone protected tenant. Jairam S/o Togylambada, so called ancestor of the revision petitioners has nothing to do with any part of the lands in Survey No.45 and they might have managed the Patwari in tampering with record to cause enter their names, and from any such wrong entries, that too when respondents alone are the protected tenants got preferential right of purchase under Section 38(D) of the Act and otherwise, if the landlord got more than two family holdings, the respondents being the protected tenants are entitled to Section 38(E) certificate. The petitioners' husbands, who were alive by the time, 3rd

respondent-MRO passed the order on 18.07.1990, kept quiet later and the Joint Collector rightly dismissed the appeal, which was filed in 2013 after 23 years, which is hopelessly barred under Section 93 of the Act, as the limitation is only 60 days from the date of the impugned order and for no delay condonation application filed even and thereby the order of the Joint Collector dated 17.08.2015 is on merits and no way requires interference by this Court while sitting in revision and hence sought to dismiss the revision.

4. Heard both sides at length and perused the entire material on record.

5. The further factual matrix necessary to mention for the purpose of the revision besides the facts already concerned supra and in nutshell are that one Bheemsen Rao S/o Kondal Rao was undisputedly the pattedar of the land in Survey No.45 of total extent of Ac.18.13 guntas or 18.21 guntas, as the case may be of Salveed Village of Kulkacharla Mandal of Ranga Reddy District and said Bheemsen Rao was resident of Kulkacharla and the land is part of several extents of lands owned by said Bheemsen Rao, who died leaving behind his two sons by names, Narsimha Rao and Ananthapadmanabha Rao.

6. The P.T.Register of Salveed Village shows six respective extents of lands owned by said Bheemsen Rao S/o Kondal Rao as pattedar with names G.Vaduka, Gurramvani Katta, G.Vaduka, Katachenu, Yetagodala Chelka and Nerella Chelka. So far as G.Vaduka there are respective extents concerned showing the name of the tenant as Chinnaiah, Pedachinnaiah, Narsaiah for one extent and Dasa Lambada for another extent. So far as Gurramvani Katta concerned, Ramaiah, Veeraiah and Svaiah; so far as Katachenu, Yetagodala Chelka and Nerella Chelka - the three respective items concerned, the name of the tenant recorded as Kummari Laxmaiah. There is nothing to show other than Kummari Laxmaiah, there was any other person as a protected tenant from the P.T.Register entries supra.

7. The claim of the revision petitioners before the Joint Collector is not based on said P.T.Register entry showing for the lands in question Kummari Laxmaiah was the tenant for no other names mentioned but from other record. In fact the M.R.O. by the impugned order dated 18.07.1990, in File No.B/ 684/ 1990 entered the names of Kummari Hanmaiah S/o said Kummari Laxmaiah and K.Veeraiah S/o said Kummari Laxmaiah as the protected

tenants being the sons of said Laxmaiah as the protected tenancy rights as per Section 40 of the Act are heritable.

8. *Prima facie*, from perusal of the P.T.Register, when Kummari Laxmaiah was the only protected tenant and the revision respondents, Hanmaiah and Veeraiah are the only sons of Kummari Laxmaiah in their application to bring on record, being the legal heirs, to enter their names in the P.T.Register as protected tenants in succession of the heritable rights, the order of the M.R.O/ Tahsildar there from cannot be found fault, for no other names mentioned in the P.T.Register to give any notice to any other persons pursuant to the entries in said P.T.Register.

9. However, the claim of the revision petitioners including before the Joint Collector was that, said Kummari Laxmaiah was having two brothers, Pentaiah and Beemaiah and they each got 2/ 3rd share to claim as protected tenant for the Survey No.45. The P.T.Register nowhere describes their names as such even to consider such a contention based on the P.T.Register entries.

10. Even coming to the Khasra Pahani of the year 1954-55, it shows for Survey No.45 total extent as Ac.18.21 guntas and the ownership mentioned that of Bheemsen Rao S/o Kondal Rao as pattedar and it has

shown in two parts viz., Ac.9.08 guntas of Yetagodala Chelka and Ac.8.4.9 guntas of Katachenu.

11. What all mentioned in the Khasra Pahani further is the name of Jairam S/o Togylambada of Salveed Village is for Survey No.45/ A, to an extent of Ac.9.11 cents and not for Survey No.45. Likewise for Survey No.45/ AA an extent of Ac.3.03 guntas, the name of Laxmaiah S/o Yellappa of Salveed Village; for Survey No.45/ E an extent of Ac.3.03 guntas in the name of Pentaiah S/o Yellappa of Salveed; and for Survey No.45/ EE an extent of Ac.3.04 cents in the name of Beemaiah S/o Veerappa.

12. Even Chasla record of Salveed village filed only for Survey No.45/ A an extent of Ac.9.11 cents and one Jairam S/o Togylambada of Salveed Village is mentioned of the year, 1955-58 showing three years prior to that there was Muntabillu. So far as Survey No.45 Yetagodala Chelka an extent of Ac.18.21 guntas, it is not even mentioned in the name of Jairam for the revision petitioners to claim even through said Jairam and in succession of Jairam to their late husbands as legal heirs of so called Jairam. The translated copy filed is somewhat contra to the original certificate Xerox copy of the revision enclosures page Nos.33 and 34 in this

regard and to that effect is crystal clear from the original. It is to leave about Survey Nos.45/ AA, 45/ E and 45/ EE in the three names of Laxmaiah and Pentaiah, sons of Yellappa and Beemaiah S' o Veerappa for Ac.3.03 guntas or Ac.3.04 guntas each.

13. Even coming to Pahani Patrika i.e. No.3 adangal of the years 1970, 1971 to 1980-81 filed only for Survey Nos.45/ A, B, C, D etc, which are no way relevant to the lis from what is discussed supra.

14. The decisions relied upon by the learned counsel for the petitioners in Chinnam Pandurangam v. Mandal Revenue Officer, Serilingampally Mandal, Ranga Reddy District (2007(6) ALT 134 (F.B.), Girija Bai(died) by L.R. v. Jaiwanta (1966(2) AWR 42), Pendyala Venkateswarlu v. Estates Abolition Tribunal, East Godavari, Rajahmundry (1963(1) AWR 99) and order in W.P.No.13919 of 1997 dated 16.12.2003 (Thotapally Venkateshwara Sharma and another v. the Joint Collector, Mahabubnagar, have no application to the facts of the present case from the facts discussed supra, much less to support the claim of revision petitioners belated claim.

15. Even coming to No.2/ No.3 adangal from 1987-88 to 2004-05, those are also not reflecting for Survey No.45,

but for Survey Nos.45/ A, B, C, D or the internal sub-divisions therein.

16. Once the P.T.Register is the oldest one showing the land in Survey No.45 of Ac.18.21 guntas belongs to Bheemsen Rao in the tenancy of K.Laxmaiah and the respondents K.Hanmaiah and K.Veeraiah are the only sons of late K.Laxmaiah, there is nothing more but to show they are the only legal heirs and other than the two respondents no other legal heirs to succeed K.Laxmaiah of the protected tenancy rights under the land owner Bheemsen Rao or his heirs for Ac.18.21 guntas for Survey No.45 in entering of the names of the respondents in the P.T.Register for the same by the 3rd respondent-M.R.O. and it no way requires interference and thus the conclusion arrived by the Joint Collector no way requires interference from above merits.

17. Apart from the above, the order of the M.R.O. was of the year 1990 and the appeal maintained against that order was about 23 years later in the year, 2013 and it is hardly believable of they have no knowledge about the same, much less to say when the P.T.Register and original Khasra Pahani so far as Survey No.45 concerned show only the names of respondents' father K.Laxmaiah as the sole protected tenant and when there is no need

of giving notice to the revision petitioners (not concerned with said land and its tenancy rights) so also from Chasla record and once that the record is very clear, the Joint Collector is also right in dismissing the application on further merits, besides the appeal filed before the Collector was with no delay condonation application for the 23 years delay to explain. Thus, this Court while sitting in revision, there is nothing to interfere and thereby the revision petition is liable to be dismissed for no merits to interfere. However, it is made clear that in view of the observations supra of land in Survey No.45 is different from land in Survey No.45/ A, 45/ AA, 45/ E and 45/ EE, the order is confined to Survey No.45 only and not interfering with any extent claimed to decide on its own claim insofar as other than Survey No.45 supra.

18. Accordingly and subject to the above observations, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 21.10.2016
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