

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND**

HON'BLE SRI JUSTICE P.NAVEEN RAO

**WRIT PETITION NOs. 8228, 27066 of 1995 &
3349 of 1996**

Date: 14.06.2016

WP No. 8228 of 1995

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Between:

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Ch.China Narasimha Raju, s/o. Venkata Raju,
Aged about 75 years, Agriculturist, r/o.Vedireswaram
Village, Ravulapalem Mandal, East Godavari District
and another.

..... Petitioners

And

The Govt. of A.P., rep.by its Secretary, Revenue (Land
Reforms) Department, Secretariat Buildings, Hyderabad
and others.

.....Respondents

The Court made the following:

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND
HON'BLE SRI JUSTICE P. NAVEEN RAO
WRIT PETITION NOs. 8228, 27066 of 1995 &
3349 of 1996,

COMMON ORDER: (Per the Hon'ble Sri Justice P.Naveen Rao)

In these three writ petitions, petitioners pray to declare explanation appended to Section 3 (i) of the A.P. Land Reforms (Ceiling on Agricultural Holding) Act, 1973 (for short, Act, 1973) is unconstitutional and illegal and consequently to hold that while computing the total extent of land towards holding of the owners, the land in possession of tenants cannot be included.

2. The point that arises for consideration in these writ petitions is, whether explanation to Section 3(i) of Act, 1973 is unconstitutional?

3. To appreciate the point in issue, the relevant facts necessary for consideration in these three writ petitions are as under.

3.1.1. In the W.P.No.3349 of 1995, the 1st petitioner on behalf of his family unit and 2nd petitioner in his individual capacity filed declarations under Section 8(1) of the Act, 1973. In the said declarations, petitioners claimed that an extent of Ac.4.55 in R.S.No.142/2 and Ac.11.18 in R.S.No.144/1 were under lease to Sri Atluri Harischandraiah,; an extent of Ac.9.34 in R.S.No.137 is under lease to Kaza Nageswar Rao; an extent of Ac.8.17 in R.S.No.15 is under the lease of Kaza Annapurnamma; an extent of Ac.1.35 cents in R.S.No.320/4A is under lease of Masuniri Nageswar Rao. These lands are in possession and enjoyment of the tenants for a long time and, therefore they have to be excluded. After following due procedure and on detailed consideration of the claims of the declarants, the primary authority passed orders dated 28.08.1981 holding that declarants are holding 3.95 ½ 4 S.H. and that they are

holding excess land to a tune of 2.5504 S.H. Aggrieved thereby, 1st petitioner preferred appeal to the Land Reforms Appellate Tribunal in LRA No.127 of 1981. The State also preferred appeal. Both appeals were considered and by order dated 06.08.1983, the Tribunal affirmed the decision of the primary authority and dismissed the appeals. Aggrieved by the orders of the Land Reforms Appellate Tribunal, petitioner filed Civil Revision Petition No.2551 of 1983 in this Court. This Court disposed of the CRP by order dated 17.08.1987. This Court granted limited relief directing the respondents to exclude Ac.2.44 in Sy.No.232/2 from the application of the provision of the Act, 1973. Aggrieved thereby, SLP No.12899 of 1987 was filed, which came to be dismissed on 1.12.1994.

3.1.2. In the counter affidavit, the respondents contended that possession of the subject lands were taken in the year 1995 by following due process. This contention is not denied.

3.2.1. In W.P.No.8229 of 1995, the petitioners are resident of Veditreswaram village, Ravulapalem Mandal of East Godavari District. The 1st petitioner took on lease the lands to an extent of Ac.4.13 cents covered by R.S.No.12/2, 69/2 and 103/1 of Eethakota village of Ravulapalem Mandal and 2nd petitioner took on lease to an extent of Ac.5.72 cents covered by R.S.No.285/1, 203/7 and 203/2 of L.Polavaram of Ravulapalem Mandal from the 6th respondent and her husband. The 6th respondent and her husband, who are the original owners of the land, filed declaration under the Act, 1973. Initially, the Land Reforms Tribunal computed the entire extent of land including the land in possession of the petitioners as the holding of the original owners. On appeal filed by the 6th respondent in L.R.A.No.99 of 1990, the Land Reforms Tribunal recognized the tenancy of the petitioners, but however computed the entire extent of land towards the land held by the 6th respondent in the order dated 18.09.1992.

Consequently, the Land Reforms Tribunal by its order dated 8.8.1994 determined that 6th respondent was holding 0.2782 S.H. excess land and directed the 6th respondent to surrender the excess land. Accordingly, surrender proposals were submitted by the 6th respondent showing the lands including the lands in possession of the petitioners. The said proposals were accepted vide order of the Land Reforms Tribunal, dated 19.12.21994 and 16.01.1995. Basing on the orders of the Land Reforms Tribunal, when Mandal Revenue Officer attempted to take possession of the lands from the petitioners, petitioners objected to such action. Petitioners made representation to the Tribunal on 26.12.1994 requesting the Tribunal not to accept the surrender proposals made by the 6th respondent. As there was no response from the Tribunal, petitioners filed claim petition before the Land Reforms Tribunal under Rule 16(7) of the A.P. Land Reforms Rules claiming right over the said lands and to exclude the lands from the surrender proposals, since the petitioners cannot be evicted as they are the protected tenants and Tribunal has no jurisdiction to pass orders of possession. Since no positive orders are passed in favour of the petitioners, this writ petition is instituted.

3.2.2. In the counter affidavit filed by the respondents, it is averred that the Mandal Revenue Inspector, Ravulapalem was authorized to take possession of the excess lands and accordingly the Mandal Revenue Inspector has taken possession of the land to an extent of Ac.0.94 cents in S.No.12/2, Ac.0.75 cents in S.No.69/2 and Ac.2.34 cents in S.No.103/1 of Ethakota village and Ac.0.80 cents in S.No.285/1 of L.Polavaram village. The Mandal Revenue Inspector has taken the land to an extent of Ac.0.35 cents in Sy.No.203/7 of L.Polavaram village on 02.02.1995 and was kept in the safe custody of the Village Administrative Officer. No reply is filed denying the said stand of the respondents.

3.3.1. In W.P.No.27066 of 1995, the petitioners are residents of Kodurupadu, hamlet of Allavaram, Allavaram Mandal of East Godavari District. The 1st petitioner has taken on lease the lands to an extent of Ac.10.70 cents comprised of Ac.1.04 cents in S.No.138/1, Ac.3.83 cents in S.No.139/1, Ac.1.14 cents in S.No.150/54, Ac.0.64 cents in S.No.150/50, Ac.1.35 cents in S.No.150/7, Ac.0.59 cents in S.No.150/8, Ac.1.81 cents in S.No.138/2 and Ac.0.30 cents in S.No.138/4 of Allavaram village in the year 1969 from the 6th respondent. Late Sri Kuncharlapati Venkata Raju, father of the 2nd petitioner, took on lease to an extent of Ac.9.33 cents comprised of Ac.1.64 cents in S.No.149/1, Ac.0.28 cents in S.No.149/2, Ac.0.97 cents in S.No.149/3, Ac.1.60 cents in S.No.149/4 and Ac.4.85 cents in S.No.8/3 of the said village in the year 1969 from the 6th respondent. Similarly, 3rd petitioner herein took on lease the lands to an extent of Ac.8.39 cents comprised of Ac.3.27 cents in S.No.119, Ac.1.24 cents in S.No.120/2, Ac.0.53 cents in S.No.120/4, Ac.0.99 cents in S.No.120/6, Ac.0.36 cents in S.No.120/5 and Ac.2.00 in S.No.120/5 of the same village from the 6th respondent.

3.3.2. The 6th respondent filed declaration under the Act, 1973. The Land Reforms Tribunal directed exclusion of the land in possession of the petitioners from the holding of the 6th respondent. Aggrieved thereby, the State filed appeal before the Land Reforms Tribunal in L.R.A.No.31/80. The said appeal was also dismissed by order dated 02.01.1981. The State preferred C.R.P.No.1944 of 1981 before this Court. The CRP was allowed by order dated 19.3.1984. This Court ordered to include the leasehold lands also for computation of total holding of the original owner-declarant i.e., 6th respondent. Basing on the orders of the High Court in the above CRP, the Land Reforms Tribunal passed orders on 07.06.1995 holding that the declarant is having 0.3050 S.H. in excess of the ceiling area as on the notified

date. The surrender particulars filed by the declarant also showed the land in possession of the petitioners. The Tribunal ordered to take possession of the lands, which are actually in possession of the petitioners also. This writ petition is filed aggrieved by the authorities of the Revenue Department in seeking to take possession of the lands in possession of the petitioners as tenants.

4. The facts as noted above would disclose that the proceedings under the Act, 1973 have become final. Petitioners started this round of litigation challenging the 'explanation' to Section 3 (i) of the Act, 1973 itself and pray to grant consequential reliefs of exclusion of the land held in possession by the tenants from computation of total extent of land the owner can retain in accordance with the provisions of the Act, 1973. It is the case of the petitioners that but for the 'explanation' appended to Section 3(i) of the Act, the land held in possession of tenants could not have been computed to the owners.

5. It is primarily contended on behalf of the petitioners that land which is held by the tenants in Telangana area (now Telangana State) is excluded from the computation of the land holding of owner of the agricultural land, whereas similar benefit is not extended in Andhra area of the erstwhile combined State of Andhra Pradesh and the same is discriminatory and violative of the mandate of Article 14 of the Constitution of India. It is the foremost contention of the learned counsel for the petitioners that there could not have been different treatment to the status of land held in possession by tenant merely based on geographical location of land though forming part of one state (before bifurcation) and such action is arbitrary and unconstitutional. Learned counsel submits that in Section 13 of the Act, 1973 a specific provision is made for exclusion of the land in possession of tenant who is granted certificate under Section 38-E of the A.P. (Telangana Area) Tenancy and Agricultural Land Act, 1950 (Act, 1950), whereas no such benefit is extended to the land held by

the tenants in Andhra area. In accordance with Section 13 of the A.P.Tenancy Act, 1956, even in Andhra Area a tenant acquires right of permanent enjoyment of tenancy land. He, therefore, submits that the 'explanation' appended to Section 3(i) of the Act is unconstitutional as it seeks to discriminate between two tenants based on the geographical location of the holding within the then combined State. There can be no discrimination based on geographical location. However, learned counsel fair in submitting that there was no similar provision to that of Section 38-E of the Act, 1950 in Andhra Area (present State of Andhra Pradesh).

6. Learned Government Pleader justifies the determination of land holding of the owner under the Act, 1973 by counting the land in possession of tenant also and contended that the said principle is upheld by the High Court and the Supreme Court. He further submits that it is not permissible for the petitioners to raise this plea after proceedings under the Act, 1973 have attained finality.

7. To appreciate the submissions, it is necessary to examine the scope of Section 3(i) and 'explanation' appended thereto and Section 13 of the Act, 1973 to the extent relevant. They read as under:

“S.3 (i) ‘holding’ means the entire land held by a person,-

- (i) as an owner;
- (ii) as a limited owner;
- (iii) as an usufructuary mortgagee;
- (iv) as a tenant;
- (v) who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise’ or in one or more of such capacities, and the expression “to hold land” shall be construed accordingly

Explanation : - where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in the holding of both such persons.

“S.13. Special provision for protected tenants:

- (1) Where the holding of any owner includes any land held by a protected tenant, the Tribunal shall, in the first instance, determine whether such land or part thereof stands transferred to the protected tenant under Section 38-E of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950, and if so, the extent of land so transferred; and such extent of land shall thereupon be excluded from the holding of such owner and included in the holding of such tenant, as if the tenant was the owner of such land for the purposes of this Act.
- (2) Subject to the provisions of sub-section (1), the relevant provisions of this Act aforesaid shall apply in the matter of such land by such protected tenant.

8. Section 3(i) defines “holding”. According to this definition, holding means, the entire land held by a person as owner, as tenant etc. According to explanation appended to this provision, where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in the holding of both such persons. It would mean that portion of the land held by the tenant shall also be computed towards land holding of the owner for the purpose of arriving at the total holding of an owner.

9. The object of the Act is “prescription of ceiling on agricultural holding and taking over of surplus land and to distribute such surplus land to poor people”. The object of fixing the ceiling is in recognition of the fact that huge extent of land was in the hands of few farmers, whereas millions of others do not have cultivable land and were unable to eke out their living. Such high volume of holding of land in few farmers resulted in several socio economic inequities/imbalance. The Indian Parliament intended to remove this disparity to some extent and to distribute the excess land from such farmers to the deserving farmers. In understanding the scope of ‘explanation’, this object of legislature has to be kept in mind.

10. The intent of Central legislation is clearly discernable from the contents of ‘explanation’. The legislature intend to avoid mischief that can be played by the owners by excluding major part of their land by showing it in possession of the tenant and claim that such land be

excluded from the computation. If such declarations were allowed, would have frustrated the very object of the Land Ceiling Act.

11. In recognition of prevailing system of tenant farming for decades in Telangana Area and to secure such land in the hands of tenants, Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (Act, 1950) was made. Act, 1950 confers on them right to claim patta of the land held by them. Section 38-E of the Act, 1950 vests power in the competent authority to grant certificate of ownership in favour of the tenant.

12. Section 38-E to the extent relevant reads as under:

Section 38E – Ownership of lands held by protected tenants to stand transferred to them from a notified date.

(1) Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, judgment, decree, contract or grant to the contrary, the Government may, by notification in the (Andhra Pradesh Gazette), declare in respect of any area and from such date as may be specified therein, that ownership of all lands held by protected tenants which they are entitled to purchase from their landholders in such area under any provision of this Chapter shall, subject to the condition laid down in sub-section (7) of Section 38, stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such lands:

Xxxx

(2) A certificate in the prescribed form declaring him to be owner shall be issued by the Tribunal after holding such enquiry as may be prescribed, to every such protected tenant and notice of such issue shall simultaneously be issued to the landholder.

13. Once certificate under Section 38-E of Act, 1950 is issued, the tenant becomes owner of the land covered by the Section 38-E Certificate and the original owner gets divested of his right over the said land. Section 13 of the Act, 1973 recognizes this contingency and gives effect to the mandate of Section 38-E of Act, 1950 and, therefore, excludes the land in possession of the tenant in whose favour certificate under Section 38-E of the Act, 1950 is issued, from the total land holding of owner. Section 13 of the Act, 1973 carves out exception to 'explanation' to Section 3 (i) in so far as land of an owner

which permanently vested in the protected tenant. A careful reading of Section 13 of Act, 1973 makes it clear that it is applicable only to such of the tenants in whose favor Section 38-E certificate was issued. Thus, even in Telangana not all tenant holdings are excluded for computation of total holding of original land owner.

14. Coming to the cases on hand, tenants are not granted such recognition and they continued to be tenants. The tenancy in Andhra Area is governed by the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (Tenancy Act). The provisions of the Tenancy Act grant protection to tenant from eviction/dispossession, but tenant cannot become owner. There is no similar provision as available in Section 38-E of Act, 1950 is made in Tenancy Act. Therefore, owner is not entitled to claim exclusion of land held in possession by tenants. In Telangana, the tenants covered by Section 38-E certificate under the Act, 1950, a small segment of tenants, are a class by themselves and Andhra tenants cannot compare with them. It is settled principle of law that classification based on separate parameters is permissible and such classification does not fall foul of mandate of Article 14 of the Constitution of India. A provision can be held to be discriminatory and violate the mandate of Article 14 of the Constitution only if it seeks to treat two like persons forming part of homogeneous group differently. In Telangana, protected tenant in whose favour certificate under Section 38-E of Act, 1950 is issued becomes absolute owner and the original owner ceases to be the owner. He forms into a separate class as compared to any other tenant, whether in Telangana or Andhra. The tenants in Andhra cannot compare themselves with the tenants in Telangana in whose favor Section 38-E certificates were issued and concerned property vested in them. Thus, tenants in Andhra and Section 38-E certificate holders in Telangana do not form into one homogenous group as sought to be made out by petitioners. The classification has intelligible differentia with object sought to be

achieved and it fits into the overall scheme of Act, 1973.

15. In view of specific mandate flowing out of Act, 1950, the tenants in Andhra Area, now forming part of residuary State of Andhra Pradesh cannot claim parity with tenants holding Section 38-E certificates in Telangana State. It is also necessary and expedient to note that Act, 1950 was made when Telangana was separate from Andhra. Telangana was merged with Andhra State to form composite state of Andhra Pradesh only on 30.11.1956. After the formation of composite State also, this Act is continued to be in force. Furthermore, by the time these writ petitions are considered, both regions are separated and formed into two separate States. Therefore, there cannot be a comparison of these two types of tenants and to claim parity. Claim of parity can arise only if two persons are similarly situated.

16. 'Explanation' to Section 3(i) of the Act, 1973 read with definition of 'holding' does not make any distinction on various categories of holding and it treats all holdings alike. Thus, perforce, 'explanation' to section 3(i) does not introduce classification and bring about distinction in any 'holding'. Section 13 carves out exception to this sweeping provision, to the land held in possession by protected tenants in Telangana area/State who were granted Section 38-E certificates under the Act, 1950 and the land held by them is not computed in the holding of original owner. If at all petitioners have a grievance, it is against not making a provision similar to Section 38-E of Act, 1950 and extension of protection in Section 13 of Act, 1973, covering the tenants in Andhra Area (now State of Andhra Pradesh).

17. It is also appropriate to note that provision is in the statute book for more than 40 years and stood the test of times. At this stage, it is appropriate to notice that this very provision was considered by the Supreme Court in the case of **State of Andhra Pradesh v.**

Mohd.Asrafuddin^[1].

17.1. Supreme Court observed as under:

“6. The term ‘holding’ takes in its fold land held by various persons in various capacities viz., as an owner, as a limited owner, as a usufructuary mortgagee as a tenant or as a person in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise, or in one or more of such capacities. The explanation appended to the definition clearly contemplates that if the same land is held by one person in one capacity and by another person in another capacity such land shall be included in the holding of both such persons. Obviously, therefore, the same land can be taken to be a part of the holding of more persons than one provided they hold it in different capacities.

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8. The word ‘held’ is not defined in the Act. We have, therefore, to go by the dictionary meaning of the term. According to Oxford Dictionary ‘held’ means: to possess, to be the owner or holder or tenant of ; keep possession of; occupy. Thus, ‘held’ connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term ‘held’ only in the sense of possession. For example, if a land is held by an owner and also by a tenant or by a person in possession pursuant to a contract for sale,, the holding will be taken to be the holding of all such persons. It obviously means that an owner who is not in actual possession will also be taken to be a holder of the land. If there was any doubt in this behalf, the same has been dispelled by the explanation attached to the definition of the term ‘holding’. The explanation clearly contemplates that the same land can be the holding of two different persons holding the land in two different capacities. The respondent in view of the definition certainly is holding as an owner, although he is not in possession.”

17.2. The larger Bench of the Supreme Court confirmed the above view in the case of **Yedida Chakradhararao v. State of Andhra**

Pradesh^[2]. The Supreme Court observed as under:

“11.It was submitted by learned counsel that in view of this context although the explanation to sub-section (i) of Section 3 is very widely worded, its meaning cannot be so extended as to cover a case where the owner of the land is no longer in possession of the land and has parted with the possession thereof under an agreement creating a right, legal or equitable, in the land concerned. We find it difficult to accept this contention. Clauses (i) to (v) of sub-section (i) of Section 3 set out the various capacities in which a person can be said to “hold” land for the purposes of the said Act and among these capacities are “as a usufructuary mortgagee, as a tenant and as one who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract of sale”. The very language of sub-section (i) of Section 3 indicates that land can be *held* as contemplated in the said sub-section by persons in a number of capacities. The Explanation in plain language states that the same land can be *held* by one person in one capacity and by another person in a different capacity and provides that such land shall be included in the holdings of both such persons. The Explanation thus clearly contemplates that the same land can be *held* as contemplated under sub-section (i) by one person as the owner and by another person as his lessee or as a person to whom the owner has delivered possession of the land in part performance of agreement to sell. On a plain reading of the language used in the Explanation, we find it that it is not possible to accept the submission that only where the land is in possession of a person can that land be regarded as *held* by him.

12 to 13. xxxxxxxx

14. Apart from this, as we have pointed out earlier, in our view, considering the clear language of Section 3(i) of the said Act read with Explanation to that section, the view taken in Mohd. Ashrafuddin case is, with respect, the correct view, and we are inclined to take the same view on the construction and legal effect of that provision. ”

18. The above decisions settle the issue of applicability and scope of definition of ‘holding’ in Section 3(i) and ‘explanation’ to section 3(i). We do not see any illegality in the ‘explanation’ appended to Section 3(i) of Act, 1973 to sustain the challenge mounted, by exercising power of judicial review.

19. We are not persuaded to accept the contention of the learned counsel for the petitioners for one more reason. The owners allowed the proceedings under the Act, 1973 to become final. The litigation on the subject reached up to Supreme Court and the very issue was the bone of contention in the litigation. Even assuming that tenant’s claim is valid, at the first available opportunity petitioners ought to have raised this issue. It is not the case of the petitioners that they were not aware that the land in possession of the tenants was also computed for the purpose of determining the holding of the owner of the land. Following the decision of the Supreme Court in **Mohd.Asrafuddin** (supra), this Court held that land in possession of tenant cannot be excluded. SLP No.12899 of 1987 was also dismissed following the decision in **Yedida Chakradhararao** (supra). It is thus clear that the issue of inclusion of land held in possession of the tenants as part of land holding of owners has attained finality. It is therefore, not open to the petitioners to once again agitate the same issue under the guise of challenging statutory provision. The tenants-petitioners have not shown how they are affected by the declaration against original owners, more so when they assert that they are not holding excess land than the ceiling limit. Their tenancy rights are not affected by the decisions under the Act, 1973. By a side wind owners want to get back

the land by upsetting the settled issue of such holding. Furthermore, as the issue of computing the land in possession of tenants as part of land holding of owner is settled, any declaration as sought in these writ petitions also becomes otiose.

20. We, therefore, see no merit in the writ petitions. Writ petitioners fail in their challenge to constitutional validity of provision impugned. Writ petitions deserve to be dismissed and are accordingly dismissed.

Miscellaneous petitions if any pending, shall stand dismissed.
No costs.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 14.06.2016
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**WRIT PETITION NOs. 8228, 27066 of 1995 &
3349 of 1996**

Date: 14.06.2016

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[\[1\]](#) AIR 1982 SC 913

[\[2\]](#) (1990) 2 SCC 523