THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.389 OF 2009

DATED : 07.09.2016

Between :

Pambala Shivaiah (died and his L.Rs.)
(died per L.Rs.8 to 12)
R/o.Keesara Village & Mandal,
Ranga Reddy District & 14 others.

.. Petitioners

And

The Joint Collector-I,
R.R.District at Lakdi-ka-pool, Hyderabad & 2 others.

.. Respondents

This court made the following :

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ORDER :

Petitioners challenge the order of Joint-Collector, passed in the appeal filed against the decision of Revenue Divisional Officer, Ranga Reddy, East Division under the A.P.(Telangana Area) Abolition of Inams Act, 1955, (for brevity the "Act, 1955").

2. Petitioners claim that they are the descendants of the original inamdar of the land to an extent of Ac.1.06 guntas in Sy.Nos.104 and 105 of Keesara Daira Village. While so, the 3rd respondent claimed that he as well as his vendors have been in continuous possession and occupation of the subject property and in accordance with the provisions contained in the Act, 1955, he is entitled for grant of occupancy right certificate. Such claim of the 3rd respondent was accepted by order dated 03.04.1997. Having come to know about the said order, petitioners herein preferred appeal before the Joint Collector. By order dated 08.11.2005, the Joint Collector allowed the appeal and remanded the matter to Revenue Divisional Officer, for denovo enquiry after considering the objections of the petitioners. The 3rd respondent challenged the said order before this Court in C.R.P.No.6807 of 2005. By order dated 03.03.2006 this Court affirmed the decision of the Joint Collector and dismissed the C.R.P. As a consequence, the Revenue Divisional Officer conducted denovo enquiry and by his order dated 01.10.2007 granted Occupancy Right Certificate (ORC) in favour of the 3rd respondent. The appeal filed against the said decision was rejected by the Joint Collector vide his order dated 06.12.2008

confirming the decision of the Revenue Divisional Officer. Hence, this revision is filed under Section 28 of the A.P (Telangana Area) Abolition of Inams Act, 1955.

3. Heard Sri Pasam Srinivasa Reddy learned counsel for the petitioners and Sri V.Hari Haran, learned counsel for the 3rd respondent and none appeared for respondents 1 and 2.

4.1. Learned counsel for the petitioners would submit that the order of the Revenue Divisional Officer, granting the prayer to issue ORC is primarily based on the report of the Mandal Revenue Officer. Whereas, the report of the Mandal Revenue Officer is erroneous and contrary to his own assumption of the ground position. Learned counsel would submit that the Mandal Revenue Officer on the one hand records that all along the name of 'Pambalavadu' was reflected as Pattedar from the year 1955 continuously. Whereas in the possessory column, sometimes it is shown as cultivator and sometimes it is shown as owner and sometimes shows some other names. Crucially for the year 1971-72 against possessory column it is written as "Harijana Dayara". According to the petitioner it means village settlement. In 1972-73 also similar entry is made. When it comes to 1973-74 it is shown as blank. While recording that it is shown as blank, the Mandal Revenue Officer states that there was over writing, and the name of Sri Lingaiah is written. He further states that in the report against column No.4 "Pambalavadu" was struck down and the name of Sri Bupathi Narsimha was shown as possessor. The entries against column No.3 and 4 are in conflict.

4.2. Learned counsel also placed on record the certified copies of pahanies which also show the possessory column as blank for the crucial period of 1973-74. He would therefore submit that the 3rd respondent or his vendors, or the vendors' vendors were never in possession by the crucial date and therefore are not entitled for issuance of ORC. These inconsistent statements, though pointed out, the Revenue Divisional Officer ignored, and issued certificate in favour of the 3rd respondent on erroneous grounds. He would further submit that admittedly petitioners are the inamdars. This fact is recorded in the order passed by this Court in C.R.P.No.6807 of 2005. Even in the order of Revenue Divisional Officer, he recognizes the petitioners as inamdars. However, ignoring the crucial aspects, he issued certificate in favour of 3rd respondent.

4.3. By taking through the provisions of Sections 4 to 8 of the Act, 1955 he would further submit that a certificate can be issued, only, if the conditions mentioned thereunder are fulfilled. Whereas the 3rd respondent does not fit into any of these provisions and therefore, he is not entitled for issuance of ORC as claimed by him. By elaborating the relevant provisions vis-à-vis the facts of this case, he would further submit that according to sub-section 4 of the Act, 1955 only inamdar is entitled to be registered as an occupant subject to exceptions mentioned therein and those exceptions are reflected in Sections 5 to 8 of the Act, 1955. To attract Section 5 a person must be "Kabiz-e-Kadim", whereas the 3rd respondent is not fitting into the definition provided to this term in Section 2 (e) of the Act, 1955. Therefore, this section is not attracted. He would further submit that admittedly, the 3rd respondent is not claiming as tenant in any form. Therefore, Sections 5 to 8 are not attracted. He would thus submit that the order of Revenue Divisional Officer is erroneous and the Joint Collector also failed to appreciate the relevant aspects and erred in rejecting the appeal filed by the petitioners.

5.1. Learned counsel for the 3rd respondent submits that the 3rd respondent purchased land from Bhupathi Sudarshan and Bhupathi Ramakrishna vide registered document dated 26.08.1987. The vendors of the 3rd respondent purchased the said property by way of registered sale deed dated 21.04.1986. The vendors' vendors of the 3rd respondent are Sri Murugu Narsimha and 11 others. For the present the 3rd respondent do not have any record but obviously the link documents would show that Murugu Narsimha and 11 others could have purchased the property from Sri Lingaiah who is shown as possessor in the possessory column. Thus, in terms of the provisions of the Act, 1955 as on the crucial date, Sri Lingaiah, being the person in possession, the 3rd respondent being the subsequent purchaser and in possession of the property, is entitled to claim ORC.

5.2. He would further submit that petitioners have no manner of right to contest the claim of the 3rd respondent. Petitioners cannot claim as inamdars; no material is brought on record to show that the petitioners are inamdars or successors to the original inamdar. What is mentioned in the relevant records against pattedar column was only as 'Pamabalavadu'. There can be any number of persons belonging to that family and no material is brought on record to show that the petitioners alone are the persons succeeding to the original 'Pambalavadu' and there is no other person seeking as successor to 'Pambalavadu'.

5.3. He would further submit that admittedly, petitioners are not in possession and therefore, they have no manner of right to object issuance of ORC in favour of 3rd respondent.

6. The point for consideration is whether the Occupancy Right Certificate was validly granted to respondent No.3 ?

7.1. A reading of the order of the Revenue Divisional Officer would show that he proceeded to pass the said order on the assumption and based on the report of the Mandal Revenue Officer. As noted in the contentions of learned counsel for the petitioners, Mandal Revenue Officer admits the recording of the name of Pambalavadu as pattedar from 1955 onwards. He also notes the different entries in the possessory column; more crucially for the year 1973-74 in the annexures enclosed to the report against possessory column, it was shown as blank. While recognizing the fact that against the possessory column, there was no name entered and shown as blank, he would go to say that there was an overwriting of the name of Lingaiah. When there was no name written and it was shown as blank, the question of overwriting does not arise. It is not stated in his report as to how and when the name of Lingaiah was entered. The certified copies of pahanies for the relevant year relied upon by the learned counsel for the petitioner would show that against possessory column, it was blank. Thus, there was no explanation coming forth as to how Lingaiah name was written and when it was entered. Report would further go to show that against column No.4 of his report Pambalavadu was written and struck down and Bhupathi Narsimha is shown. However, it is silent when such entry was made. When this Statement is compared with the statement enclosed as annexure; it would show that continuously the name of Pamabalavadu is reflected from 1955 to 1976.

7.2. For the purpose of granting ORC what is relevant is on the vesting date persons should be in possession, but the report is silent. The Revenue Divisional Officer proceeds to assume that 3rd respondent validly succeeded to the property on the assumption that the vendors to the vendors of 3rd respondent were in possession. Whereas, even according to the report of the Mandal Revenue Officer, no where the name of Murugu Narsimha is reflected. No document was placed before the original authority, appellate authority or before this Court, to show that Murugu Narsimha succeeded to the property from Sri Lingaiah, who was claimed to be in possession of subject land. Unless this crucial aspect is established, it cannot be said that vendors to the vendors of 3rd respondent were in possession of the property on the crucial date, in order to attract the provisions of Act, 1955. This Court specifically asked learned counsel for the 3rd respondent to place on record atleast the linkage between Lingaiah and Murugu Narsimha, but learned counsel expressed his inability to secure the link document.

7.3. Furthermore, there is no answer to the specific assertion of learned counsel for the petitioners regarding application of provisions of Sections 5 to 8 of the Act, 1955. Learned counsel for the 3rd respondent fairly submits that the 3rd respondent was not relying on any tenancy right of himself or his vendors or vendors of his vendors and therefore, Sections 5 to 8 are not attracted. As fairly submitted by learned counsel for the 3rd respondent, Sections 5 to 8 of the Act, 1955, are not attracted. Thus, the only provision which is relevant is Section 4. Section 4 refers to the inamdar. No material is placed on record to show that the 3rd respondent is an inamdar or he traces the title to inamdar.

8. Thus, the decision of Revenue Divisional Officer is contrary to record and amounts to exceeding jurisdiction vested in him as the same is in contravention to provisions of Act, 1955. The Joint Collector also failed to appreciate the scope of power of granting ORC under the Act, 1955 and erred in affirming the decision of Revenue Divisional Officer. Therefore, the order of Revenue Divisional Officer as affirmed by the Joint Collector is liable to be set aside.

9. Accordingly, the civil revision petition is allowed setting aside the order dated 01.10.2007 passed by the Revenue Divisional Officer, affirmed by the Joint Collector-I by order dated 06.12.2008. It is made clear that in this revision the only issue for consideration is the validity of the order of Revenue Divisional Officer in acceding to the request of 3rd respondent for grant of ORC as affirmed by the Joint Collector. It is also made clear that there is no expression of opinion on the entitlement of petitioners for claiming the benefits flowing out of Act, 1955 or assertion of any other right by the 3rd respondent in any other proceedings and this order does not come in the way of either of the parties to

assert their rights and title to the property. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

P.NAVEEN RAO,J

7th September, 2016
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