

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

**SECOND APPEAL No.820 of 1999
AND
CIVIL REVISION PETITION No.3765 of 2009**

COMMON JUDGMENT :

The Second Appeal in S.A.No.820 of 1999 is maintained by the 4 appellants-plaintiffs against the sole respondent-defendant aggrieved by the concurrent findings of both the Courts below viz., judgment and decree dated 22.07.1997 in O.S.No.362 of 1993 passed by the Principal Junior Civil Judge, Hyderabad East and North (for brevity "the trial Court"), and the judgment and decree dated 10.08.1999 in A.S.No.101 of 1997 passed by the I Additional District Judge, Ranga Reddy District at Saroornagar, Hyderabad (for brevity "the lower appellate Court"). The suit filed is for a bare injunction in respect of the plaint schedule property of Acs.26.09 guntas in Sy.Nos.7 and 8 of Aushapur Village, Ghatkesar Mandal, Ranga Reddy District.

2. The substantial questions of law raised in para-16 of the Memorandum of Grounds of Appeal are as follows:

- (a) Whether the Court below is right in not granting permanent injunction especially when it is proved he and his predecessors are in possession of the property from before 1952?
- (b) Whether the Court below erred in not following the judgment of the Supreme Court where the Supreme

Court stated that it is well settled law in this country where a person is in settled possession of the property, even on the assumption that he had no right to remain as the property, he cannot be dispossessed by the owner of the property, except by recourse to law?

- (c) Whether the Court below is not right in looking into the fraudulently obtained protected tenancy certificate which is the subject matter of the appeal before the Joint Collector, especially the defendant or his predecessors are not proved to be in possession of the property at any time?
- (d) Whether the Court below is justified in not granting permanent injunction when 145 proceedings clearly prove that the plaintiff is entitled to continue in possession of the property till lawfully evicted and no eviction proceedings were taken against him and not even proceeding for recovery of possession by the protected tenant?

3. It is therefrom and after hearing, the Second Appeal was admitted on 19.09.1999 by formulating the substantial question of law that arises for consideration is:--

“Whether a suit for simplicitor injunction is maintainable in a Civil Court or not, when the matter is pending before the Revenue Authorities under the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (Act No.21 of 1950)?

4. In CMP.No.18978 of 1999, from the admission of the Second Appeal, on that day itself, there was an interim injunction as prayed for, was granted restraining the

respondent from interfering with the plaint schedule property of the plaintiffs. The respondent-defendant filed stay vacate petition in CMP.No.24130 of 1999 with a counter affidavit to the stay petition and from the plaintiffs-appellants filed reply affidavit to it, after hearing therefrom on 07.12.1999, it was observed in making the interim injunction absolute pending Second Appeal, that the appellants had injunction order, both during pendency of the suit and also during pendency of the Appeal Suit, in their favour pursuant to their contention of they are in possession since before the suit continuously and the possession thereby requires to be safe-guarded, but, at the same time, the Court is bound to safe-guard the interest of the respondent also during the pendency of the Second Appeal and thereby and in the circumstances, the interim injunction granted in favour of the appellants is made absolute, on condition of the appellants depositing Rs.80,000/- (Rupees eighty thousand only). The said order shown to be complied with and the Second Appeal therefrom is coming up for final hearing thereafter.

5. It is while so, C.R.P.No.3765 of 2009 was filed by the 4 plaintiffs-cum-appellants in the Second Appeal supra, against the order of the Joint Collector-I, Ranga Reddy District, in Appeal No.F2/397/2009, dated 16.06.2009, by array of (1) the Joint Collector-I, Ranga Reddy District, Hyderabad; (2) the Deputy Collector and Revenue Divisional Officer, Ranga

Reddy District; as revision respondent Nos.1 and 2, respectively, and (3) Sri Narayana Reddy (died per LRs.); (4) Smt. A. Susheela devi (died); (5) Sri A. Krishna Reddy, s/o. late Narayana Reddy; and (6) Smt. P. Sarala Reddy, w/o. P. Shanker Reddy, who are appellant Nos.1 to 4 in Appeal No.F-2/397/2009 supra, and of whom, the said A. Krishna Reddy and Smt. P. Sarala Reddy, claimed as son and daughter, respectively, of the said Narayana Reddy and Smt. A. Susheela Devi supra, also being the LRs, as respondent Nos.4 to 6 of the revision; and the other parties viz., (7) Smt. Muneerunnisa (died); (8) Sri Mir Shahabuddin Ali Khan, s/o. Meer Hasham Ali Khan; (9) Sri Mohammed Rustum, s/o. Mohammed Hussain; (10) Sri Mohammed Pasha, s/o. Mohammed Hussain; (11) Sri Mohammed Moin, s/o. Mohammed Hussain; and (12) Sri Kawadi Ramireddy, s/o. late K. Narayan Reddy, as respondent Nos.7 to 12 of the revision (LRs of the original owners Sri Mir Aslam Khan and his wife Smt. Muneerunnisa Begum and alienees for part of the properties).

6. The contentions in the grounds of revision are – that the impugned appeal order is contrary to law, in setting aside/reversing the earlier well-considered order dated 20.12.2008 in File No.L/534/2008 of the 2nd respondent – Deputy Collector and Revenue Divisional Officer, Ranga Reddy District, in respect of Section 38-E Certificate granted

in favour of respondent Nos.4 to 6 of the revision, from their claim as legal representatives of Sri A. Narayana Reddy, that the 1st respondent wrongly recorded the revision impugned order stating that the name of Khairatabad Narayana @ A. Narayana Reddy is reflected in respect of the lands in Sy.Nos.6, 7, 8, 343 and 344 in Khasra Pahani as well as in P.T. Register, which is contrary to the record, as the Khasra Pahani shows the names of 9 persons as tenants and the same was struck off and the name of Sri Khairatabad Narayana etc., (vagaira) is inserted in the said Khasra Pahani with no basis to show that Khairatabad Narayana and A. Narayana Reddy are one and the same and that respondent Nos.4 to 6 are the legal representatives of the said Khairatabad Narayana and thereby erred in upholding the grant of Section 38-E Certificate in their favour based on the so-called worksheet purportedly prepared by the Deputy Tahsildar and the Tahsildar, having failed to consider the factum of P.T. Register is the final document and weightage cannot be given to the so-called worksheet when P.T. Register itself shown Sy.Nos.7 and 343 do not find place in the P.T. Register and in respect of Sy.Nos.8 and 344, there is no mention of the name of any protected tenant, and in respect of Sy.No.6, there are as many as 9 names registered as protected tenants and the findings of the 1st respondent contrary to the above, in saying that Khairatabad Narayana is entitled to Section 38-E Certificate in respect of all five survey

numbers supra is grossly erroneous, that the 1st respondent also erred in upholding Section 38-E Certificate in favour of respondent Nos.3 to 6 on the basis of the order passed by the Land Reforms Tribunal in the declaration filed by Sri Mir Aslam Khan and failed to see that the said Sri Mir Aslam Khan questioned the order of the 2nd respondent in appeal No.10603/1975 on the ground that there are no protected tenants in his land and the persons shown in the list of protected tenants are not the protected tenants and the stand of the Pattadar has been consistent from the beginning and thereby the order passed by the Land Reforms Tribunal cannot form the basis for grant or rejection of Section 38-E Certificate, as the proceedings shall stand or fail on their own merit, that the 1st respondent – Joint Collector erred in holding that the decrees in O.S.No.6 of 1975 and O.S.No.16 of 1972 are only compromise decrees and not binding on Sri Khairatabad Narayana, saying that he was already a protected tenant; having failed to see that the decree holders of the 2 suits are vendors of the petitioners, having been declared the said land in their declaration of holding before the Land Reforms Tribunal and thereby the finding of the 1st respondent - Joint Collector that though the vendors of the petitioners shown the land in Sy.Nos.7 and 8 of Aushapur Village in their declaration, the same cannot be taken into consideration in view of the declaration filed by the original land owners for the very same land as protected tenancy

lands, is erroneous and unsustainable in giving emphasis unnecessarily to the said Land Reforms Tribunal's proceedings, that the 1st respondent – Joint Collector failed to see that it is an appeal filed by the landholders only, which is being continued by the petitioners, who could show there are no protected tenants in respect of the said survey numbers and they would be entitled to retain the land by virtue of purchase from the decree holders of the suit in O.S.No.6 of 1975, who inturn purchased from the original landholders, and grossly erred by the Joint Collector in holding contrary, as if the landholder is not challenging the rights of late K. Narayana and thereby they do not get effected. It is also the contention of the petitioners in the further grounds of revision that the findings of the 1st respondent in the proceedings under Section 145 Cr.P.C., shall not have any bearing on the impugned proceedings under revision and the 1st respondent failed to see that in the proceedings before him, impugning the earlier order, it was clearly held that Sri K. Narayana was never in possession of the land and his claim was based on fabricated documents and the Criminal Court, in fact, directed re-delivery of possession to Sri Mir Aslam Khan and the said orders were confirmed even by the High Court; that the 1st respondent – Joint Collector also failed to see that one Sri Kawadi Rami Reddy, revision respondent No.12 filed an application before him to implead the son of Sri K. Narayana, and against the order rejecting the said implead application,

writ petition being W.P.No.11299 of 2000 was filed and it was disposed of with a direction that the party should approach the Mandal Revenue Officer, Ghatkesar Mandal, to the claim as a legal heir of late K. Narayana and therefrom the Mandal Revenue Officer, Ghatkesar Mandal, issued proceedings in L.No.B-1/20/2004, dated 25.04.2006, directing all parties to approach the Civil Court for obtaining Succession Certificate and similar letters issued to others, claiming as legal representatives of protected tenants, and the 1st respondent - Joint Collector failed to look into the crucial issue of deciding upon the legal representatives of the protected tenants, more particularly, when there is a serious dispute with regard to entitlement of protected tenancy and also that of the legal representatives and the Joint Collector should have desisted from deciding the matter, when there is no adjudication on the succession rights of the protected tenant – K. Narayana. It is also one of the further grounds of revision, that as per the final record of tenancy, the name of protected tenant was recorded as K. Narayana for Sy.No.6, that in the year 1975 Ownership Certificate under Section 38-E of the Act was granted in the said name and it is not shown as to who was the father of K. Narayana, that the landholder in Appeal No.10603/1975 challenged the said certificate in favour of the said Sri K. Narayana for issuing the same without any notice and opportunity to the landholder and the appeal was allowed by the Joint Collector on 05.01.1988, setting aside the

Ownership Certificate of 1975 supra, in directing the Primary Authority to decide the matter afresh after notice and opportunity to all the parties and in the said appeal Sri A. Narayana was shown as one of the respondents with other protected tenants, that the legal representative is different from lineal descendant as lineal descendant alone can succeed to the protected tenancy rights under Section 40 of the Act and so far as respondent Nos.4 to 6 are concerned, there is no commonality of the name or caste or sub-caste with Sri K. Narayana, that the Primary Authority had erroneously granted Section 38-E Certificate without deciding the eligibility of the said respondent Nos.4 to 6 to the claim of succession, vide proceedings No.L/2673/93, dated 21.05.1993 of the Revenue Divisional Officer, that it is not the case of respondent Nos.4 to 6 that they were tenants or protected tenants and thereby issuance of Certificate under Section 38-E of the Act dated 21.05.1993 is illegal and when the same was challenged in an appeal in No.F2/4993/93 by the landholder before the Joint Collector, the said appeal was allowed on 10.01.2008 by remanding the matter to the Primary Authority to decide whether the respective holding restrictions under Section 38-E of the Act are existent in the case on hand i.e., the landholders holding more than two family holdings and the tenant holding more than one family holding, however, in the remand order, the appellate Authority has recorded the contention of the petitioners that

respondent Nos.4 to 6 have no relationship of any nature, muchless as lineal descendants to late K. Narayana in the appeal, that the order of the Revenue Divisional Officer was set aside and the matter was remanded for fresh enquiry on all contentions and after second remand, when Primary Authority had clearly held that respondent Nos.4 to 6 are not related and are not successors to the protected tenancy rights and declared that they are not entitled for grant of Section 38-E Certificate, vide order dated 20.12.2008 of the Revenue Divisional Officer, when respondent Nos.5 and 6 herein filed an appeal in No.F2/397/2009 before the Joint Collector, who, by the revision impugned order dated 16.06.2009, without even deciding about the eligibility of respondent Nos.4 to 6 to the claim of succession of protected tenancy rights of late K. Narayana, set aside the order of the Revenue Divisional Officer dated 20.12.2008, and allowed the appeal and restored Section 38-E Certificate dated 21.05.1993, which was issued after the first remand in favour of respondent Nos.4 to 6 in substitution of original entries of K. Narayana in Section 38-E Certificate dated 26.05.1975 and the eligibility and entitlement of succession of the protected tenancy rights of late K. Narayana is the gross root question, which ought to have been decided by the appellate Authority before going into the aspect of the respective family holdings of landholder and respondent Nos.3 to 6, since the eligibility of respondent Nos.4 to 6 to succeed to the protected tenancy

rights of late K. Narayana was disputed through-out and the finding on such a jurisdictional fact could not have been avoided or grossly overlooked by the appellate Authority covered by the revision impugned order. It is also one of the further contentions in the grounds of revision that issuance of Ownership Certificate under Section 38-E of the Act should always be in the name of protected tenant based on final record of tenancy, which may ensure to the benefit of successors, who fulfill the eligibility criteria under Section 40 of the Act and, in the present case, while the Ownership Certificate of 1975 granted in the name of late K. Narayana, the Ownership Certificate dated 21.05.1993 came into the name of respondent Nos.4 to 6, which is the basic infirmity in the order of the appellate Authority, without noticing the difference between the legal heirs and lineal descendants as per Section 40 of the Act and that too there is no evidence on record to connect them as lineal descendants of late K. Narayana, thereby the revision impugned appellate order of the Joint Collector in restoring the so-called Ownership Certificate is illegal, that the revision petitioners, being the purchasers of the subject land based on a decree of Civil Court, have locus to challenge the said appellate order, since there was no protected tenant as per the case set up by the petitioners before the authorities under the Act and even assuming that late K. Narayana is a protected tenant, without any further particulars and in the absence of lineal

descendants to late K. Narayana, the protected tenancy should have been extinguished and respondent Nos.4 to 6, without any manner of legitimate right of succession to late K. Narayana, successfully obtained the Ownership Certificate without any legal entitlement, the question of issuing the Ownership Certificate in their name does not arise, that from the above, for want of lineal descendants to late K. Narayana, his protected tenancy rights got extinguished and the sale transactions of the petitioners thereby not hit by the provisions of the Act and the revision impugned appellate order of the Joint Collector is thereby unsustainable and hence the same is to be set aside, by allowing the revision and by restoring the order passed by the 2nd respondent – Revenue Divisional Officer in File No.L/534/2008, dated 22.12.2008, for no basis for the Joint Collector to reverse the same by the impugned order dated 16.06.2009 covered by Appeal No.F2/397/2009 and to pass such other orders.

7. Pending the revision, the revision petitioners – K. Satyanarayana and 3 others supra sought for suspension of the impugned order dated 16.06.2009 of the Joint Collector in CMP.No.5198 of 2009 in C.R.P.No.3765 of 2009. After hearing both sides, practically disposed of, though not by specific mention of CMP.No.5198 of 2009 on 23.09.2009 by recording the fact that the learned counsel appearing for respondent Nos.5 and 6 supra submitted that they are not going to take

any coercive steps pursuant to the impugned order, and by recording the same, the revision was posted for hearing and after admission on 02.02.2010 for final hearing.

8. Thereby, while it is coming up for hearing pursuant to the submissions of the Second Appeal and the Revision to be heard together by docket order dated 03.02.2011, the Second Appeal was required to be posted along with the Revision for common hearing and disposal and since then the Second Appeal is coming along with the Civil Revision Petition for common hearing by continuing the docket proceedings in the Second Appeal for both the matters. It was while so, the Advocate for respondent Nos.5 and 6 to the Second Appeal and the Revision, by name Sri M.S. Narayana Charyulu was replaced by Sri Harender Pershad and the same was recorded in the docket proceedings dated 21.07.2015. It was while the Revision and the Second Appeal are coming up for common hearing and disposal finally, on 18.10.2016 for no representation when posted under the caption "FOR DISMISSAL", it was heard in part on 20.10.2016 and on 09.11.2016 in the course of further hearing, by noticing of the fact of original records of the 1st respondent – Joint Collector of the revision not received, this Court called for the records and after receiving the same, when the matters are coming up for further arguments from 21.11.2016, both the learned counsel i.e., counsel for the revision petitioners *vis-à-vis*

counsel for respondent Nos.5 and 6 supra, pursuant to their Memos under USR.Nos.7240 and 7236 of 2016, both dated 24.11.2016, were permitted to go through the record of the lower Court on 28.11.2016 and on 29.11.2016 at request of the learned counsel for respondents supra, the matters were adjourned.

9. While so, on 06.12.2016, the docket order records in taking adjournment, saying that the original record is verified and adjournment is required for one more week of the matters coming under the caption "Part Heard" to obtain some certified copies of records and to submit the same, if at all, and it is also submitted that a Memo in USR.No.7539 of 2016 filed to call for some records and as the same is not necessary to pass any orders or call for, as they would obtain certified copies and submit, if at all, by the next date of hearing, the same is recorded.

10. A perusal of the record shows that a petition was filed subsequently on 13.12.2016 in CRP.MP.No.8014 of 2016 with the affidavit of respondent No.5 – K. Krishna Reddy on behalf of respondent Nos.5 and 6 – Smt. P. Sarala Reddy and the prayer therein is to call for the entire record relating to Appeal No.B4/10603/75 on the file of the Joint Collector, Ranga Reddy District. In fact, earlier Memo in USR.No.7539/2016 covered by the docket order referred supra not pressing the same, though not so endorsed on 06.12.2016, and it is the

same record now sought to be called for, saying particularly at para-5 of the affidavit, that though, they filed a Memo earlier to call for, submitted to get certified copies and file for a note to call for necessary record, however, they applied for certified copy and it was not furnished by the Joint Collector, hence the application to call for, saying that the office of the Joint Collector informed that there is District bifurcation under which the Aushapur village became part of Medchal District from Ranga Reddy District and they are in the process of transferring records and not possible to grant any certified copies. In fact, the record of the lower Authority once called for in the course of hearing on the application also, the Court did not feel any necessity to postpone the part-heard matter and call for the record, that too when earlier made a submission as admitted in the affidavit of getting certified copy, if at all, and file, and that too from another Memo dated 22.12.2016 in USR.No.7970/2016 of respondent Nos.5 and 6 supra, there is an intimation received by them on 19.12.2016 from the Collectorate, Ranga Reddy District, that the so-called record pertaining to File No.B4/10603/75, for which they applied for certified copy not even traced from their thorough search and thereby the submission is that they proceed with the submission of the arguments further and practically there is no necessity for calling for the record as sought for in CRP.MP.No.8014 of 2016, as the record not available even to call for, by kept pending the matter to delay the proceedings.

11. Having regard to the above, these Memos and the petition are closed.

12. From the above, heard the arguments of both sides, at length, on the Civil Revision Petition *vis-à-vis* the Second Appeal and perused the material on record.

13. In deciding the question of law in admitting the Second Appeal, which depends upon the result of the revision proceedings practically, now coming to the matter covered by the revision, which is practically the subject matter of the *lis* covered by the Second Appeal also, the points required to determine on the scope of revision jurisdiction under the Act are :-

- (1) whether the purchasers from the original landholder or any person claiming through him can challenge the Occupancy Rights Certificate issued under Section 38-E of the Act in respect of any protected tenancy rights vide order dated 03.04.2000 in CRP.No.2255 of 1999 and a decision of the Apex Court in KOTAIAH v. PROPERTY ASSN. OF THE BAPTIST CHURCHES (PVT.) LTD.¹?
- (2) Whether all the lands covered by Sy.Nos.6 to 8, 343 and 344 of Aushapur village, in the P.T. Register enter the name of late K. Narayana?
- (3) Whether the particulars as required by the format under the Act for the Formats and Rules are part of the Statutory provisions, so to read vide Larger Bench expression of this Court in HINDUSTAN AERONAUTICS

¹ (1989) 3 SCC 424

EMPLOYEES COOPERATIVE HOUSING SOCIETY LTD.
v. SPECIAL COURT (LAND GRABBING)², particularly from paras-63 and 64 by relying upon the expression of the Apex Court in this regard and, if so, whether there is proper entering of the name of the protected tenant with Surname and father's name required, if not, as to what is the sanctity even in mentioning Khairatabad Narayana without vendor's name or age or address in the P.T. Register for Fathe Bavi filled, without mention of survey number, but mentioning an extent of Ac.10.16 guntas (dry) with Assessment No.12, owned by the landholder Sri Mir Aslam Kham, s/o. Osman Khan, who is the pattadar and of col.No.9 for gap in survey number at col.No.1, even taken as Sy.No.6, as mentions 'Khairatabad Narayana' only and there is no such mention for Sy.No.8, as for Sy.No.8, even referred as Fathe Bavi, the full name of an extent of Acs.10.23 guntas (dry), the assessment number is different to Sy.No.6(12) as herein 8.5 and the landholder and pattadar is self-same and at Col.No.9 of Sy.No.8 for the Assessment No.8.5 there is no protected tenant, at all, muchless any person even, that the name – Khairatabad Narayana recorded and similar is the case for Sy.No.343, the full name is – Anna Thammula Bavi and the extent is Acs.2.01 guntas, dual crop land with different Assessment No.18 to the other 2 survey numbers supra, and the landholder-cum-pattadar is the self-same and in col.No.9, the name and the vendor's name of the tenant, there is no mention of name of anybody muchless Khairatabad Narayana. Further, for Sy.Nos.7 and 344, there are no P.T. Register entries, muchless an entry in the name of protected tenant under the land owner Sri Mir Aslam

² 2004 (6) ALT 772 (L.B.)

Khan supra, even to claim and, as such, whether the said Khairatabad Narayana is the self-same person Sri A. Narayana Reddy for the claim by respondent Nos.5 and 6, as son and daughter, respectively, with their mother, since died, even to claim any protected tenancy rights as lineal descendants, under Section 38-E Certificate with reference to the succession under Section 40 of the Act, that too when only protected tenant's name is covered for part of Sy.No.6 for an extent of Acs.10.16 guntas of the name Sri Khairatabad Narayana and the remaining Ac.0.25 guntas mentioned the name 'Sathi Yelluga' and the revision impugned order of appeal of the 1st respondent – Joint Collector, is thereby sustainable, if so, whether only for Sy.No.6 for an extent of Acs.10.16 guntas from mentioning therein only of Khairatabad Narayana and not for the remaining survey numbers out of the claim?

- (4) Further, whether such protected tenancy of Sri Khairatabad Narayana extinguished for lack of lineal descendants, if the respondents are not lineal descendants, apart from what is the consequences of the proceedings covered by the Land Reforms Tribunal in relation to the lands in question of the landlord showing any protected tenancy rights for any extent, and whether the same being construed as binding either as estoppel or waiver or otherwise?

14. In deciding the above points formulated for consideration in the revision and the question of law involved in the Second Appeal, before coming to the further factual matrix of the Revision vis-à-vis the Second Appeal, the provisions relevant under the Act No.21 of 1950 are :--

"5. Persons deemed to be tenants:

A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the landholder and if such person is not—

- (a) a member of the landholder's family; or
- (b) a servant on wages payable in cash or kind, but not in crop share or a hired labourer cultivating the land under the supervision of the landholder or any member of the landholder's family; or
- (c) a mortgagee in possession.

Provided that if upon an application made by the landholder within one year from the commencement of this Act to the Tehsildar within whose jurisdiction the land is situated--

- (a) The Tehsildar declares that such person is not a tenant and his decision is not reversed on appeal or revision, or
- (b) The Tehsildar refuses to make such declaration but his decision is reverted on appeal or revision such person, shall not be a tenant."

"19. Termination of tenancy;

19(1) xxxxxxxxxxxx

19(2) The landholder may terminate a tenancy on the grounds that the tenant--

(a)(i) has failed to pay in any year, within fifteen days from the day fixed under the Andhra Pradesh (Telengana Area) Land Revenue Act 13 17 F) for the payment of the last instalment of land revenue due for the land concerned in that year, the rent of such land for the year; or

(ii) xxx xxx xxx xxx

(iii) xxx xxx xxx xxx

(b) has done any act which is destructive or permanently injurious to the land; or

(c) has sub-divided the land; or

(d) has sub-let the land or failed to cultivate the land;

(e) personally, or has assigned any interest therein; or

(f) has used such land for a purpose other than agriculture;

Provided that no tenancy of any land by a tenant shall be terminated on any of the grounds mentioned in this sub-section unless the landholder gives six months' notice in writing intimating his decision to terminate the tenancy and the grounds for such termination.

Sec. 32: Procedure of taking possession: (1) A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply to the Tahsildar in writing in the prescribed form for such possession.

(2) No landholder shall obtain possession of any land or dwelling house held by a tenant except under an order of the Tahsildar, for which he shall apply in the prescribed form.

(3) On receipt of an application under sub-section (1) or sub-section (2) the Tahsildar shall, after holding an enquiry pass such order thereon as he deems fit.

(4) Any person taking possession of any land or dwelling house otherwise than in accordance with the provisions of sub-section (1) or sub-section (2), as the case may be, shall, without prejudice to his liability to the penalty provided in Section 96, be liable to forfeiture of the crops, if any, grown on the land to the payment of such costs as may be awarded by the Tahsildar or by the Collector on appeal from the Tahsildar.

Sec. 34: Protected tenants: (1) A person shall, subject to the provisions of sub-sees. (2) and (3) be deemed to be a Protected Tenant in respect of land, if he--

(a) has held such land as a tenant continuously—

(i) for a period of not less than six years, being a period wholly included in the Fasli years 1342 to 1352 (both years inclusive) or

(ii) for a period of not less than six years immediately preceding the 1st day of January, 1948 or

(iii) for a period of not less than six years commencing not earlier than the 1st day of Fasli year 1353 (6th October, 1943) and completed before the commencement of this Act, and

(b) has cultivated such land personally during such period.

37. Persons not entitled under sec. 34 deemed in certain circumstances to be protected tenants:

(1) Every person who at the commencement of this Act holds as tenant any land in respect of which no person is deemed to be a protected tenant under sec. 34, shall, on the expiration of one year from such commencement or, the final rejection of all claims by any other person to be deemed under sec. 34 to be a protected tenant in respect of such land, whichever is later, be deemed to be a protected tenant in respect of such land unless the landholder has before such expiration or final rejection as aforesaid made an application in the prescribed form to the Tahsildar for a declaration that such person is not a protected tenant."

Section 38-D "Procedure when landholder intends to sell land to a protected tenant:

(1) If the landholder at any time intends to sell the land held by the protected tenant, he shall give a notice in writing of his intention to such protected tenant and offer to sell the land to him. In case the protected tenant intends to purchase the land, he shall intimate in writing his readiness to do so within six months, from the date of the receipt of such notice. If there is any dispute about the reasonable price payable by the protected tenant for the land, the provisions of sub-section (3) to (8) of sec. 38 shall apply mutatis mutandis.

(2) If the protected tenant does not exercise the right of purchase in response to the notice given to him by the landholder under sub-sec. (1) such protected tenant shall forfeit his right of purchase of the same and the landholder shall be entitled to sell such land to any other person. On such a purchase by any other person, the protected tenant shall forfeit all his rights in the land save those provided for in sec. 41.

Section 38-E: "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 landholder in such area under any provision of this chapter shall, subject to the condition laid down in sub-section (7) of sec. 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;

Provided that where in respect of any such land any proceeding under sec. 19 or sec. 32 or sec. 44 is pending on the date so notified, the transfer of ownership of such land shall take effect on the date, on which such proceeding is finally decided, and when the tenant retains possession of the land in accordance with the decision in such proceeding.

Explanation: If a protected tenant, on account of his being dispossessed otherwise than in the manner and by order of the Tehsildar as provided in sec. 32, is not in possession of the land on the date of the notification issued hereunder, then for the purpose of the sub-section, such protected tenant shall, notwithstanding any judgment, decree or order of any Court, or the order of the Board of Revenue or Tribunal or other authority, be deemed to have been holding the land on the date of the notification; and accordingly, the Tehsildar shall notwithstanding anything contained in the said [section 32](#), either suo motu or on the application of the protected tenant hold a summary enquiry, and direct that such land in possession of the landholder or any person claiming through or under him in that area, shall be taken from the possession of the landholder or such person, as the case may be, and shall be restored to the protected tenant and the provisions of this section shall apply thereto in every respect as if the protected tenant has held the land on the date of such notification.

Sec. 40 Right of protected tenant heritable :

- (1) All rights of a protected tenant shall be heritable.
- (2) If a protected tenant dies, his heir or heirs shall be entitled to hold the tenancy on the same terms and conditions on which such protected tenant was holding the land at the time of his death and such heirs may, notwithstanding anything contained in this Act, sub-divide inter se according to their shares the land comprised in the tenancy to which they have succeeded.
- (3) If a protected tenant dies without leaving any heirs, all his rights shall be extinguished.

Explanation:- The following persons only shall be deemed to be the heirs of a protected tenant for the purposes of this section :-

- (a) his legitimate lineal descendants by blood or adoption;
- (b) in the absence of any such descendants, his widow for so long as she does not remarry.
- (4) The interest of a protected tenant in the land held by him as a protected tenant shall form sixty per cent of the market value of all the interests in the land and that of the landholder and of persons claiming under him shall be limited to the remaining forty per cent.

Sec. 44 Landholder's right to terminate protected tenancy :

- (1) Subject the provisions of sub-section (8) a landholder who, on the date on which the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1954 comes into force, is not already cultivating personally an area equal to three times the family holding for the local area concerned and who in good faith requires land leased out to a protected tenant for cultivating personally may, notwithstanding anything contained in Section 19 of the Act, terminate the tenancy and resume such land or portion of such land that would, together with the land which he is already cultivating personally, either as owner or protected tenant, be equal to three times the family holding, by making an application in the manner prescribed to the Collector or any other officer whom the Government may from time to time authorise in this behalf:

Provided that after the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1955, no such landholder shall be entitled to exercise the right of resumption under this sub-section unless he has within a period of eighteen months from the commencement of the said Act filed with the Deputy Collector, in the prescribed manner, a statement of reservation demarcating the lands which he reserves for the exercise of the rights or resumption under this section. On such statement being filed, the Deputy Collector shall, as soon as may be, after making necessary enquiry, issue a certificate to the landholder in the prescribed manner to the effect that the lands have been so reserved. The right to terminate tenancy shall be exercisable only in respect of

the lands specified in the certificate as so reserved and shall not extend to any other land.

(2) The landholder's right to terminate tenancy of any protected tenant under sub- section (1) shall be limited to an area which shall after such termination, leave with the protected tenant an area, which together with the land owned by him or cultivated by him a protected tenant, is equal to a basic holding for the local area concerned:

Provided that, where by such resumption the land that will be left with protected tenant together with other land owned or cultivated by him will be less than a basic holding, the landholder's right of terminating the tenancy, shall be limited to half the area of land leased out by him to the said protected tenant:

Provided further, that where the land owned by a landholder does not exceed a basic holding he will be entitled to resume the entire land leased by him.

(3) Nothing in sub-section (1) shall entitle the landholder to resume more than a family holding unless the income by the cultivation of such land will be the main source of income of the landholder for his maintenance.

(4) The Government shall provide by rules for-- (i) manner of conducting enquiries into the applications for resumption;

(ii) the manner of filing reservation statement of lands reserved for resumption and the issue of certificate by the Deputy Collector;

(iii) selection of lands for resumption;

(iv) exchange and consolidation of fragments to secure as far as possible contiguous blocks to the landholder, or the protected tenant;

(v) time when the resumption will take effect;

(vi) any other matter as may be considered necessary for giving effect to the provisions of this section.

(5) (a) The right of termination of the tenancy of any protected tenant under sub-sections (1), (2) and (3) shall cease after five years from the date of the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1954.

(b) The tenancy in respect of the land left with the protected tenant after termination under this section shall not at any time be liable to be terminated on the ground that the landholder bona fide requires the said land for the purpose specified in sub-section (1).

(6) Notwithstanding anything contained in this section a protected tenant of any land reserved for resumption under sub- section (1) shall be entitled within the said period of five years to exercise his right to purchase under Section 38 the land held by a landholder in excess of two family holdings, provided that such landholder before

the expiry of three months from the date of receipt of the notice under sub-section (2) of Section 38, selects the land which together with the land, if any, which he is cultivating personally is equal to the area of three family holdings, and also initiates proceedings for its resumption.

(7) If the tenancy of a protected tenant is terminated under this section in respect of part only of the land leased to him, the amount of the rent thereof payable by him shall be proportionately determined in the prescribed manner.

(8) Nothing in this section shall entitle a landholder to terminate the tenancy of a protected tenant who is for the time being a member of Co-operative Farming Society.

15. From the above provisions of the Act, coming back to the facts, undisputedly, Sri Mir Aslam Khan was the original pattadar-cum-landholder of several extents of lands in question. The only thing then to be considered is, for any of the lands there were whether any recorded protected tenants entitled to Ownership Certificate under Section 38-E of the Act, particularly for the subject matter of lands covered by the suit and the revision in Sy.Nos.6, 7, 8, 343 and 344 of Aushapur village (of which the suit claim is in relation to an extent of Acs.26.07 guntas of Sy.Nos.7 and 8 and the revision *lis* is for Sy.Nos.6, 7, 8, 343 and 344 of an extent of Acs.41.30 guntas (Acs.10.18 guntas + Acs.13.09 guntas + Acs.2.06 guntas + Acs.2.37 guntas). P.T. Register is the basis to grant Protected Tenancy Certificate or Ownership Certificate and the said certificate under Section 38-E of the Act to be issued is in Form-II and Rule 5 of the Rules made under the Act and it is based on the Gazette Notification, if any. The P.T. Register entries contain 15 columns in the printed Proforma

as part of the Act and the first part of P.T. Register, among Col.Nos.1 to 15; Col.No.1 pertains to Survey No.; Col.No.2 pertains to sub-division; Col.No.3 pertains to name of the field, if any; Col.No.4 pertains to extent; Col.No.5 pertains to Classification as to dry or dual crop; Col.No.6 pertains to Assessment Number; Col.No.7 pertains to name and father's name of the landholder; Col.No.8 pertains as to whether the landholder is either pattadar or inamdar or Shikamdar or Registered or unregistered or Hissadar; Col.No.9 pertains to name and father's name of the tenant; Col.No.10 pertains to out of the pattadar's land, the extent held by the tenant with reference to col.No.4; col.Nos.11 and 13 pertain to mode of payment and quantum of rent, respectively, if protected tenant and also as to whom payable, if other than to landholder in col.No.7; Col.No.14 pertains to other special terms, if any; and Col.No.15 pertains to remarks. It is village-wise, the particulars are meant. The Full Bench expression in HINDUSTAN AERONAUTICS EMPLOYEES COOPERATIVE HOUSING SOCIETY LTD. (supra 2) referring to the expression of the Apex Court held categorically for treating the Rules and Forms as constituting part, or atleast an extension of the principal enactment, so long as they are in conformity with the provisions of the Act under which they are framed. It was held that the Forms appended to the Rules to be read as part of the Act. Here, the Forms supra no way inconsistent with

the Act and thereby to be read as part of the Act together with the Rules.

16. Now, coming to Aushapur village, where the lands in question are situated, so far as Sy.No.6, which is known as Fathe Bavi, Col.No.3 Fathe Bavi refers to several survey numbers and for other survey numbers also mentions Anna-Thammula Bavi or Chinta Bavi or Fathe Bavi Chelaka or Samidram Bavi or Patel Kunta or Potharaju Kunta or Kasthuroni Bavi or Fakirvani Bavi etc., and the extent mentioned in Col.Nos.4 and 10 for Sy.No.6 is Acs.10.16 guntas, it is in Assessment No.12 – classified as dry and the name of the landholder-cum-pattadar is shown as Sri Aslam Khan, s/o. Osman Khan (Mir Aslam Khan) supra and the name of the protected tenant for this Sy.No.6 of an extent of Acs.10.12. guntas with Assessment No.12 is mentioned as Khairatabad Narayana. It is important to note that from the P.T. Register entries, but for this Sy.No.6, an extent of Acs.10.60 guntas covered by Patta No.12, owned by Sri Aslam Khan, the protected tenant's name is mentioned as Khairatabad Narayana, for other extents Khairatabad Narayana is not a protected tenant and there is no person by name even Narayana or Narayana Reddy or A. Narayana Reddy at Col.No.9 as a protected tenant. It is for the reason, among Sy.Nos.6 to 8, 343 and 344, claimed by respondent Nos.5 and 6 as the children of respondent No.3 – Sri A.

Narayana Reddy and his wife respondent No.4 since died, for an extent of Acs.41.30 guntas even, but for Sy.No.6, an extent of Acs.10.16 guntas supra, for other survey numbers Sri Khairatabad Narayana, even to claim by them as their father – A. Narayana Reddy, he was not a protected tenant. It is for the reason and for more clarity, for Sy.Nos.8 and 343 of an extents of Acs.10.23 guntas + Acs.2.01 guntas with Assessment Nos.8.5 and 18, owned by Sri Aslam Khan, there is no protected tenant and Sy.Nos.7 and 344 not at all found place in P.T. Register as owned by Sri Aslam Khan, for them to claim under Sri Aslam Khan or any alienee from Sri Aslam Khan. Thus, Sri Khairatabad Narayana, as a protected tenant, even for the respondents supra, so to claim as his lineal descendants, if any, is only for Sy.No.6 of an extent of Acs.10.16 guntas. Suffice it to say, the Revision impugned appeal order of the Joint Collector in ordering to grant Ownership Certificate, even other than Sy.No.6, on its face, when not find place in any protected tenant from the P.T. Register, is basically unsustainable and is an outcome of non-application of mind, even to refer and rely or restore back the so-called original order of the Revenue Divisional Officer in granting such certificate, vide order dated 12.05.1975. The said certificate dated 12.05.1975 of the R.D.O., was in the name of Sri K. Narayana and father's name not there. Before coming to the correctness of the same, a perusal of Case No.225/5 of 1952-53 before the First Class Magistrate,

Hyderabad, filed on 09.05.1952 and decided on 29.04.1954, a case laid under Section 145 of old Cr.P.C. by one Narayana Reddy in claiming that he and 8 other persons were the cultivating tenants for several lands of the pattadar – Sri Aslam Khan for some time and there is an observation saying that Sri Aslam Khan in the written statement contended that the said Narayana Reddy was never in possession of the lands as a tenant, muchless with any other 8 persons as partners nor he asked them to cultivate, and in saying, at the instance of the Patwari – Lakshma Reddy, who is a relative, it is set up as if a tenant. It was observed that Sri Aslam Khan is, admittedly, a pattadar and owner of lands and the said Narayana Reddy's version of the lands leased to him and he has taken 8 others as partners of the lease in the presence of the said Patwari Lakshma Reddy and Lakshma Reddy did not come to the Witness Box and Sri Narayana Reddy is the relative of Sri Patwari Lakshma Reddy, even the said Narayana Reddy did not come to the Witness Box nor any of his other partners, that the so-called co-shared tenants as the 4 witnesses – PW.1 – Yadagiri; PW.2 – Nagaiah; PW.3 – Kishan Rao Patwari, of whom Yadagiri, a relative of Narayana Reddy denied the relationship and Patwari Kishan Rao claimed to prepare Pahani Pathrika and that the Pahani Pathrika has no value to avail the entries therefrom and his statement shows that he is under the influence of one Rajeshwar Reddy in preparing the village records, at his

instance, and a perusal of Pahani Pathrika also shows a fabricated one to help Sri Patwari Lakshma Reddy to introduce the name of his relative – Narayana Reddy and the same cannot be relied upon to claim as tenants to play a foul game and the said material has no force, those are the statements said to have been recorded in Tahsil's Office *exparte* and they were not even called as witnesses to the Court to examine. The record clearly shows that Sri Aslam Khan and his tenants are in possession even on 09.05.1952 and thus, Sri Narayana Reddy's petition is groundless and the case is decided in favour of Sri Aslam Khan. This is the first record in relation to the lands of Sri Mir Aslam Khan.

17. The proceedings under Section 145 Cr.P.C., which covers Sy.Nos.7 and 344 also, it is clear therefrom of even by the order dated 29.04.1954 of the First Class Magistrate, Hyderabad, Sri Mir Aslam Khan, Pattadar, is only cultivating the lands and not by or through any other person called Narayana Reddy, muchless 8 others made by him as partners and other cultivating tenants, muchless to claim as tenants under the said Sri Aslam Khan etc. There is no reference to the P.T. Register under Act No.21 of 1950, if at all, the entries existing therein, but for referring to Pahani Pathrika and the entries as fabricated, in so holding in the judgment. The revision in Case No.250 of 1954 filed before the High Court of Judicature at Hyderabad was rejected before admission for no

grounds. The other document, to some extent relevant, is the copy of registered Gift Settlement Deed No.300/1963 executed by Mir Aslam Khan, s/o. Sri Mir Osman Khan, the donor, and beneficiaries of the said Gift Settlement Deed are Mir Aslam Khan's wife Smt. Muneerunnisa Begum and the properties gifted are Acs.130.08 guntas of Aushapur (Eswarpura) village in Sy.Nos.7 to 11, 332, 338, 340, 343 and 344, the donor is the absolute owner and he transferred the said lands to the donee. There is no reference of any protected tenant to the lands, in particular, Sy.Nos.7, 8, 343 and 344, and Sy.No.6 is not covered therein. Even the order dated 29.04.1954 of the proceedings under Section 145 Cr.P.C. supra covers Sy.Nos.7, 342 and 344, with a finding as under personal cultivation of the said Sri Aslam Khan (donor). There also Sy.No.6 is not included, leave about Sy.No.8. The record further shows that O.S.No.16 of 1972 on the file of the Munsif Magistrate (East and North), Hyderabad, was filed by one Sri P. Penta Reddy, s/o. Rami Reddy, and Sri Ch. Lakshmaiah, s/o. Pentaiah, for the relief of declaration that the plaintiffs are the owners of Sy.No.6 of an extent of Acs.10.18 guntas of Aushapur village and to restrain the defendant therein from interfering with their possession, saying that the defendant Sri Mir Aslam Khan on 12.03.1972 trespassed into the suit land and questioned the right and title of the plaintiffs and, purportedly, injunction relief was granted in favour of the

plaintiffs, by judgment and decree dated 20.04.1972 by the learned Magistrate. The entire judgment is not available.

18. Further, one Sri K. Narasimha Reddy @ China Narsa Reddy and Sri K. Dharma Reddy, both sons of Sri Rukkaiah, filed suit in O.S.No.6 of 1975 for Sy.Nos.7 and 8 claiming as owners for a total extent of Acs.26.09 guntas of Aushapur village, against Sri Mir Aslam Khan and others by claiming that they are in possession since their father's time and their father was a protected tenant and while so continuing, the said land was purchased on 24.08.1969 and thereafter they are enjoying with possession as owners and the defendants have no right over the said property. The said suit was covered by the compromise petition in I.A.No.43 of 1975 in O.S.No.6 of 1975 by giving up any of the rights of the defendants therein in favour of the plaintiffs, confirming their possession and entitlement and to cause record their names as owners in possession in the Revenue records for Sy.Nos.7 and 8 supra. The record further shows that the said K. Narasimha Reddy @ China Narsa Reddy and Sri K. Dharma Reddy, plaintiffs in O.S.No.6 of 1975, pursuant to the said compromise decree supra, referring to the property sold to them in 1969 itself, shown the property in their holding in the declarations filed before the Land Reforms Tribunal as non-surplus holders. It is the said K. Narasimha Reddy @ China Narsa Reddy and Sri K. Dharma Reddy sold the land in

Sy.Nos.7 and 8 of an extent of Acs.26.09 guntas to one Smt. Shanta Ademma under a registered Sale Deed No.2485/1983, dated 06.05.1983, which is marked as Ex.A.24 in O.S.No.362 of 1993, which is the subject matter of the present Second Appeal and the said Smt. Shanta Ademma, inturn sold under Exs.A.1 to A.4 to the Second Appeal suit plaintiffs, who are the appellants in the Second Appeal, which is part and parcel of the plaint schedule therein.

19. The order of the 2nd respondent to the Revision – Deputy Collector-cum-Revenue Divisional Officer, Ranga Reddy East, in No.L/534/2008, dated 20.12.2008, which was reversed by the appellate judgment of the Revision 1st respondent – District Collector on 16.06.2009 that covers these facts to some extent of the proceedings maintained by the wife of Sri Mir Aslam Khan-cum-donee of the Gift Deed of 1963 Smt. Muneerunnisa Begum since died and other family members and the alienees, including the Revision petitioners and the appellants in Second Appeal/plaintiffs. The said order dated 20.12.2008, no doubt refers to the dis-entitlement of the Protected Tenancy Certificate for Sy.Nos.7 and 8 therefrom, and coming to Sy.No.6, as referred to supra of O.S.No.16 of 1972 maintained by one Sri Lakshmaiah, s/o. Pentaiah, saying that Sri Lakshmaiah was the protected tenant for Sy.No.6 of an extent of Acs.10.18 guntas and while so, the said Lakshmaiah succeeded in possession and cultivation

from the death of Sri Pentaiah and that Sri Lakshmaiah and the co-purchaser Sri P. Penta Reddy are owners of Sy.No.6, pursuant to the decree dated 20.04.1972 in O.S.No.16 of 1972. However, the fact remains that the said P. Pentaiah was one of the 9 persons as protected tenants for only Acs.2.01 guntas in Sy.No.343 and not for Sy.No.6, though, the order dated 20.12.2008 of the Revision 2nd respondent - Deputy Collector refers Sri P. Pentaiah and Sri Lakshmaiah as protected tenants for Sy.No.6. It is not because they are protected tenants for Sy.No.343 of an extent of Acs.2.01 guntas, even they purchased under different sale deeds in 1980 from one Sri Mohd. Pasha, Mohd. Moin, the heirs of Sri Mir Aslam Khan and his wife Smt. Muneerunnisa Begum, in their name or in the name of their family members and, even they inturn, sold to others. Thus, for the Revision respondent Nos.5 and 6, even to claim as son and daughter of Sri A. Narayana Reddy, in referring as Khairatabad Narayana is the said A. Narayana Reddy, when Khairatabad Narayana himself is not a protected tenant as per P.T. Register, particularly in relation to Sy.Nos.7 and 8, apart from Sy.Nos.343 and 344, and Sy.No.8 shows that there is no protected tenant at all, if at all for Sy.No.343, one Sri Pentaiah, father of Sri Ch. Lakshmaiah, they cannot claim any protected tenancy rights for Sy.Nos.7, 8, 343 and also for Sy.No.344 and, that too, way back in 1963, Sri Mir Aslam Khan gifted to his wife – Smt. Muneerunnisa Begum, Sy.No.7, 8, 343 and 344, among other

extents, and there is no reference of any protected tenants in respect of the said survey numbers and Sri K. Narasimha Reddy and Sri K. Dharma Reddy in claiming in the suit O.S.No.6 of 1975 filed by them the rights over the land in Sy.Nos.7 and 8 and they filed Land Ceiling Declarations pursuant thereto, but for, if at all for Sy.No.6 to decide for other Sy.Nos.7, 8, 343 and 344, Sri Khairatabad Narayana is not entitled to any protected tenancy rights, leave about for Sy.No.6, Sri Pentaiah claimed as protected tenant and his son Sri Lakshmaiah and another co-purchaser Sri P. Penta Reddy claimed rights over Sy.No.6 and obtained sale deeds in their name or in the name of their family members, and intturn, sold to the third parties, they must have been impleaded in the proceedings before the Joint Collector, atleast, as they are the necessary parties, including from the order dated 20.12.2008 of the Deputy Collector, as they are in possession and enjoyment as vendors for Sy.No.6, particularly from para-8 of the order covering arguments of the petitioners therein, who are the Revision petitioners, and Sri Mir Aslam Khan's wife – Smt. Muneerunnisa Begum and the other heirs, since she died pending the proceedings, as they could not make out any case to claim that their father – A. Narayana Reddy was K. Narayana or Khairatabad Narayana, apart from their description in the Voters List shows not A. Narayana Reddy, but A. Satyanarayana Reddy.

20. So far as the claim of Sri A. Narayana Reddy is Khairatabad Narayana is concerned, there is no record from their end to co-relate for P.T. Register entry in respect of Sy.No.6 of an extent of Acs.10.18 guntas shown from Col.No.9, only for that extent as Khairatabad Narayana, the protected tenant, for the Joint Collector to pass order impugned in the Revision, particularly from the printed page Nos.11 and 12, what he referred is Khasra Pahani of 1954-55 reflected the name of Sri Khairatabad Narayana @ A. Narayana Reddy for Sy.Nos.6, 7, 8, 343 and 344. In fact, the Joint Collector did not properly apply his mind for so mentioning in the Revision impugned order. A perusal of the Khasra Pahani shows that, for Sy.No.6 of an extent of Acs.10.18 guntas owned by Sri Mir Aslam Khan, the pattadar, there is no column to mention the protected tenant's name and Col.No.15 is for other rights and succession holders, where the name of one Metta Narsaiah is mentioned, and it was struck off and there was interpolation of Khairatabad Narayana, Natha Elluga etc., and 6 names. For Sy.Nos.7 and 8, at Col.No.15, there is a mention of the name of Khairatabad Narayana vagaira by interpolation, striking off the names of Kotha Narsaiah, Aslam Khan etc., and 13 names, and even for 1954-55, from the original entries, but for Kotha Narsaiah, there is no mention of Khairatabad Narayana, for so to mention by the Joint Collector and that too, for the interpolations and tampering, which is a serious

thing, to ignore all these for reasons better known to him of what made by any extraneous things. Even the learned Joint Collector at page-11 of the impugned order supra, in continuation to it, having observed the earlier remand order dated 05.01.1988 of the Joint Collector, for *denovo* enquiry for no notice served to the landholders to pass the order dated 12.05.1975 by the Revenue Divisional Officer and the worksheet of the Deputy Tahsildar, attested by the Tahsildar, to refer is with no basis, so also to observe from the order dated 21.05.1993 of the Revenue Divisional Officer, saying that Smt. Susheela Devi, Sri A. Krishna Reddy and Smt. P. Sarala Reddy are the legal heirs of late K. Narayana, as per the so-called worksheet of the Deputy Tahsildar, without ascertaining what is the basis for it and even anything mentioned in the so-called worksheet for the sake of mentioning, could it give any sanctity and in ignoring the P.T. Register entries, which show only Khairatabad Narayana as protected tenant for Sy.No.6, how the other survey numbers also to be included to say him as a protected tenant, muchless to say that his name is also A. Narayana Reddy, or that the said persons i.e., Smt. A. Susheela Devi, Sri A. Krishna Reddy and Smt. P. Sarala Reddy are his wife, son and daughter, respectively, without production of any evidence from their end to correlate or to say that the said A. Narayana Reddy, who is the husband of Smt. A. Susheela Devi and father of Sri A. Krishna Reddy and Smt. P. Sarala

Reddy, was also known as Khairatabad Narayana. Even to say, in the course of arguments, that he is from Khairatabad area, there is a possibility of referring so, there is no mention of Khairatabad Narayana Reddy even, and if at all, so referred with *alias* names, that too in the permanent Revenue record, there could be some other recorded base, including from any Civil Supplies Card or Voters List etc. Even taken from Section 145 Cr.P.C. proceedings of 1953-54 referred supra, of one Narayana Reddy claiming rights in Sy.No.6, to correlate Khairatabad Narayana is the said Narayana Reddy and the said Narayana Reddy is to say A. Narayana Reddy, father of Sri A. Krishna Reddy and Smt. P. Sarala Reddy, it only reflects to Sy.No.6 with reference to the P.T. Register entry, at best, by further producing any other material to correlate and nothing beyond. The learned Joint Collector, in ignoring the same, could not assign any reason or justification, muchless to say influenced by the tampering entries, without discussing the same and by the so-called self-made worksheet of the alleged Deputy Tahsildar, to give credence by ignoring the valuable permanent Revenue record, that could be the basis known as P.T. Register. Thus, the observations at para-14 of the impugned order under Revision of the Joint Collector, of Khairatabad Narayana @ A. Narayana Reddy, there is no basis. The observation that for Sy.Nos.343 and 344 no others claimed, is no basis to include the said Khairatabad Narayana or A. Narayana Reddy as the

protected tenant, that too when the P.T. Register shows some other name and Sy.No.344 not found place in the P.T. Register and Sri Mir Aslam Khan in 1963 Gift Deed gifted the property to his wife, which no way refers to any protected tenant and P.T. Register entry, if at all, reflects for Sy.No.343 the name of one Sri Ch. Pentaiah, father of Sri Ch. Lakshmaiah, if at all, from what is discussed supra.

21. In fact, the Ownership Certificate under Section 38-E of the Act issued as deemed owner with effect from 01.01.1973 for the lands as K. Narayana and not mentioned therein of @ Narayana Reddy, even for the last para's observation of the impugned order of the Joint Collector, that too when the case of respondent Nos.5 and 6 is that their Surname is 'A' and their father is A. Narayana Reddy and not K. Narayana, muchless, but for, if at all, they stated of their father Sri A. Narayana Reddy was also called as Khairatabad Narayana, for that, as discussed supra, there is no basis or evidence they could produce.

22. Thus, the Revision impugned order dated 16.06.2009 of the Joint Collector is unsustainable and is liable to be set aside for the reasons stated supra insofar as Sy.Nos.7, 8, 343 and 344 are concerned, and so far as Sy.No.6 to remand the matter to the Joint Collector for re-determination, which is subject to answering below the other contentions.

23. One of the contentions that the alienees from original owners or their legal heirs, cannot maintain independently any proceedings by appeal or revision under the Act is not tenable in the factual scenario, from the factum of the co-respondents are some of the legal heirs of the deceased land owners representing the Estate of deceased land owners even to the Revision *lis* to maintain with reference Order XXII Rule 10 C.P.C. There is no dispute on the revision powers of the Court from a reading of Sections 91 and 92 of the Act, Statutorily conferred with wide amplitude that also can be governed by Article 227 of the Constitution of India.

24. Even coming to the proceedings of the Land Reforms Tribunal, leave about an admission or statement neither confer nor takes away any right and title over the property from any mention, it is also to be seen the context in which it is made to understand and appreciate in discovery of truth, as it is not the statement, but the relationship that is to be taken into consideration in determining the truth or otherwise of the statement in one proceedings to make use in other proceedings, as it sometimes happens that persons make statements, which serve their purpose for time being or upon ignorance of the true position which is required to be appreciated to decide vide ALLURI VENKATAPATHI RAJU vs, DONTALURI VENKATA NARASIMHA RAJU³ and Ms.

³ AIR 1936 PC 264

RUKMA BAI vs. LALA LAKSHMI NARAYANA⁴, relying upon ALLURI (Supra 3). Thus, the Land Reforms Declaratory statements in lieu of the factual matrix and ground realities discussed supra cannot have any bearing to create new rights or to take away existing rights therefrom and these aspects and the propositions not came for consideration in C.R.P.No.2255 of 1995 of this Court (Single Judge expression in another batch of litigation with reference to Sy.No.335 of Aushapur Village). The expression of the Apex Court in KOTIAH (supra) on the scope of law no way in dispute, however, has no application to the facts of the case on hand therefrom. Accordingly, the Point Nos.1 to 3 supra are answered and so far as Point No.4 supra, that aspect does not arise for Sy.Nos.7, 8, 343 and 344, but for it at all for re-determination by remand to the Joint Collector insofar as Sy.No.6 within the scope of remand indicated in para-22 supra.

25. In the result, the Civil Revision Petition is allowed and the impugned order dated 16.06.2009 of the Joint Collector is unsustainable and is liable to be set aside in toto and the matter is to be remanded to the learned Joint Collector-I, Ranga Reddy District, if at all, for Sy.No.6 of an extent of Acs.10.18 guntas from the P.T. Register entry, Khairatabad Narayana was the protected tenant, if respondent Nos.5 and 6 i.e., Sri A. Krishna Reddy and Smt. P. Sarala Reddy, son and

⁴ AIR 1960 SC 335 @P. 19

daughter, respectively, of Sri A. Narayana Reddy, are able to establish with any *alias* name K. Narayana or Khairatabad Narayana only, to grant Ownership Certificate under Section 38-E of the Act, that too after enquiry and by impleading the other persons claiming right over Sy.No.6, viz., Sri Kawadi Narayana as son of K. Narayana; and Ch. Lakshmaiah, son of Pentaiah, and Sri P. Penta Reddy, co-purchaser, Sri T. Vijaya, G. Vijaya Lakshmi, and also K. Ramachander Reddy, in whose names there were alienations and further alienations for Sy.No.6, right from the suit *lis* in O.S.No.16 of 1972 to the decree dated 20.04.1972 and the alienations from 1990 onwards pursuant thereto, as necessary parties, by affording opportunity to them. It is made clear that the Revision respondent Nos.5 and 6 cannot claim any protected tenancy rights so far as Sy.Nos.7, 8, 343 and 344 of Aushapur Village and the order dated 16.06.2009 of the Joint Collector, to that extent, is totally set aside and what is remanded is in respect of determination of Sy.No.6 by impleading those persons by affording an opportunity for re-determination. As a sequel, miscellaneous petitions pending, if any, in the revision shall stand closed.

26. From this, now coming to the Second Appeal – Sri K. Satyanarayana, his wife Smt. K. Rekha, and his two minor sons, being represented by him as their guardian, viz., Mr. K. Shashank and Mr. K. Eshan, who maintained the suit in

O.S.No.362 of 1993 on the file of the Principal Junior Civil Judge, Hyderabad (East and North), for the relief of permanent prohibitory injunction against the sole defendant – Sri K. Krishna Reddy, s/o. Narayana Reddy, R/o. Khairatabad, Hyderabad, in respect of agricultural land of Acs.26.09 guntas in Sy.Nos.7 and 8 of Aushapur Village, Ghatkesar Mandal, Ranga Reddy District, bounded by North : Nemargomla Village boarder; South : Sy.No.6; East : Sy.Nos.9 and 4; and West : Sy.Nos.335 and 339, with a claim that the plaintiffs purchased the property from their vendors – Sri Narasimha Reddy and Sri Dharma Reddy under a registered Sale Deed dated 16.05.1983 and are in an uninterrupted possession and enjoyment of the same, being owners and coming to the source of title of vendors, the said vendors filed suit in O.S.No.6 of 1975 against the original pattadar – Sri Mir Aslam Khan and his wife Smt. Munirunnisa Bee, which suit ended in compromise by payment of Rs.10,000/- as a sale consideration to them by the plaintiffs for the said sale of suit land and further the said Sri Narasimha Reddy and Sri Dharma Reddy, since their vendors time, were the protected tenants and are in possession as such for the past more than 25 years and the Revenue records reveal the said factum and the defendant, having no right, title or interest or possession over the suit property, is threatening to interfere and by apprehending the same, the plaintiffs, having given police report, for no action thereon, were constrained to file the suit

and from contest by the sole defendant in the written statement, stating that the said Sri Mir Aslam Khan, the original owner of the land in Sy.No.6 of an extent of Acs.10.18 guntas; Sy.No.7 of an extent of Acs.13.09 guntas; Sy.No.8 of an extent of Ac.0.13 guntas; Sy.No.343 of an extent of Acs.2.06 guntas; and Sy.Nos.344 of an extent of Acs.2.37 guntas, thus totalling to Acs.41.30 guntas of Aushapur Village, and the defendant – Sri Krishna Reddy's father one A. Narayan Reddy was the protected tenant of the said lands and the Khasra Pahani of 1954-55 reveals the same and the name of A. Narayana Reddy supra was included in the Protected Tenant's Register for the above survey numbers in 1975 and on 26.05.1975 the Certificate of Ownership was granted to Sri A. Narayana Reddy under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for brevity "the Tenancy Act") against the landholder and of several persons. The original landholder preferred an appeal No.B-4/10603/75 before the Joint Collector and during the pendency of the same, Sri A. Narayana Reddy passed away and his legal representatives were brought on record and on 05.01.1988, the said appeal was allowed and remanded for fresh enquiry and on enquiry, the order of the Revenue Divisional Officer, Hyderabad (East), vide Case No.L/1826/88, confirming the Ownership Certificate of 14.05.1993 and the defendant applied for final Patta Certificate, the R.D.O., Hyderabad (East), on

18.05.1993 having been called to deposit Rs.3,472-20 ps and defendant deposited the same on 21.05.1993 and the final patta passed by the Revenue Division Officer in No.L/2673/93 granting Occupancy Rights for Acs.40.30 guntas in Sy.Nos.6, 7, 8, 343 and 344 of Aushapur Village. The principle of adverse possession is not applicable in the case of protected tenant. The predecessors in title of the plaintiffs i.e., Sri Narasimha Reddy and Sri Dharma Reddy have no valid title to convey to the plaintiffs under the sale deed. Sri A. Narasimha Reddy (father of the defendant – K. Krishna Reddy) has been in actual physical possession of the suit land since prior to 1950 and the pattadar – Sri Mir Aslam Khan is a party to all proceedings, which are binding on the successors in title over Sri Mir Aslam Khan. The father of Sri Narasimha Reddy and Sri Dharma Reddy was not the protected tenant of the suit land at any time and they were not parties to the proceedings No.B-4/10603/88, the Court fee paid is not correct as no pecuniary jurisdiction, the interference alleged by the plaintiffs is false and there are no merits in the suit and the same is liable to be dismissed.

27. The trial Court framed the issues on entitlement of permanent injunction prayed for and on Court fee paid is correct or not, and in the course of trial, two witnesses were examined on behalf of the plaintiffs and Exs.A.1 to A.25 were marked, of which Exs.A.1 to A.4 are the sale deeds of

May/June, 1993 in favour of the plaintiffs executed by Shanta Edina, Exs.A.5 to A.21 are copies of Pahanis from 1973-74 to 1979-80, 1981-82, 1984-85 and 1992-93; Exs.A.22 and A.23 are Compromise Memo and Compromise Decree, respectively, in O.S.No.6 of 1975; and Ex.A.24 is the original sale deed dated 06.05.1983 executed by Sri Narasimha Reddy and Sri Dharma Reddy in favour of vendor of Exs.A.1 to A.4 supra, by name Shanta Edina. Ex.A.25 is the proceedings of the Mandal Revenue Officer, Ghatkesar of 1990-91, mutating the name of the said Shanta Edina in the Revenue records for the suit land. On behalf of the defendant, he himself was examined as D.W.1 and relied upon Exs.B.1 to B.3 viz., Ex.B.1 - certified copy of the order of the R.D.O., East in No.L/1826/88, dated 05.03.1993; Ex.B.2 - certified copy of Ownership Certificate issued to Sri K. Narayana; and Ex.B.3 - certified copy of the order dated 21.05.1993 in No.L/2673/93, granting final patta certificate in favour of the defendant – Sri K. Krishna Reddy.

28. The trial Court, observed in the operative portion of the judgment dated 22.07.1997 in O.S.No.362 of 1993, as under:

“in short, the case is decided in favour of Aslam Khan and his partners for the reasons stated above and it is held and ordered that he and his tenants cited above were in possession of the suit lands and entitled to possession, thereof until evicted therefrom in due course of law. File to be closed and consigned to R.R.

Sd/- I Class Magistrate,
Translated from Urdu to English.”

The decree dated 22.07.1997 in O.S.No.362 of 1993, however, reads that the suit of plaintiffs be and is hereby dismissed. The plaintiffs do pay to the defendant Rs.502/- towards costs of the suit.

29. From the above, in answering the Second Appeal substantial question of law involved, as discussed supra, from the Revision from the material on record, so far as Sy.Nos.7 and 8, which are the subject matter of Second Appeal *lis*, the Revision is allowed and the Certificate of Ownership issued under Section 38-E of the Act in favour of late Narayana Reddy, since died in 1977, by his wife's name Smt. A. Susheela Devi also since died, and sons Sri A. Krishna Reddy and the daughter Smt. P. Sarala Reddy, Second Appeal sole respondent and his sister, for not entitled to Section 38-E Certificate, for Sri A. Narayana Reddy never a protected tenant for Sy.Nos.7 and 8, covered by the plaint schedule, even able to correlate as Khairatabad Narayana or K. Narayana and they never in possession, that even a suit for bare injunction sustainable from the plaintiffs got right since their predecessors in title traced back to the original owners – Mir Aslam Kham and his wife – Smt. Muneerunnisa Begum, donee from Mir Aslam Khan, in 1963, the owner, and from them the vendors' vendor of the plaintiffs/appellants in the Second Appeal got right and title, they are entitled to the relief

and the dismissal decrees and judgments of both the Courts below, with a concurrent finding, are devoid of merits and unsustainable and the defendant – Sri K. Krishna Reddy, neither in possession nor got any right to oppose the plaintiffs' entitlement and any pendency of proceedings before the Revenue Divisional Officer or Joint Collector of Ranga Reddy District, under Section 38-E of the Act, no way bar to maintain a suit for injunction and even if the defendant disputed their right, that is not a bar as laid down by this Court in SARASWATHI v. JAYARAM MOHAN RAO⁵. The Second Appeal substantial question of law is answered accordingly, holding that a suit for bare injunction is maintainable and the plaintiffs are entitled to the relief of permanent injunction, by allowing the Second Appeal and setting aside the concurrent findings of both the Courts below and by decreeing the plaintiffs' suit, restraining the defendant and the persons claiming with or through him in respect of the plaint schedule properties from any interference. No order as to costs.

30. As a sequel, miscellaneous petitions pending, if any, in the Second Appeal shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

03.02.2017.
Msr

⁵ 1985 (1) APLJ 277

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

SECOND APPEAL No.820 of 1999
AND
CIVIL REVISION PETITION No.3765 of 2009



03.02.2017
(Msr)