

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CIVIL REVISION PETITION No.539 of 2010

ORDER:

This civil revision petition is filed against the order passed by the Joint Collector, Mahabubnagar District, dated 27.01.2010 in Case No.F1/10/2009, by and under which, the order of the lower Authority in Case No.B1/2898/89, dated 04.11.1989 and proceedings in file No.C/70/90, dated 07.11.1998 are set aside, and the matter is remanded to Tahsildar, Farooqnagar to conduct *de novo* enquiry afresh giving reasonable opportunity to both the parties to put forth their claim along with documentary evidence. Originally the said appeal was allowed by the Joint Collector on 16.06.2007 and vide orders in CRP No.4188/2007, dated 01.12.2008, the matter was remanded to the Joint Collector by this Court.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

3. The brief facts of the case are that one Ahmed Ali Siddiqui, father of the revision petitioners, was the landlord and pattedar of an extent of Ac.59.33 gunts situated in old Sy.No.396/1 corresponding to new Sy.Nos.652 to 657 of Chatanpally village of Shadnagar Mandal, Mahabubnagar District, and he gave the entire extent of land to one Katika Gopaji, the grandfather of the respondents, for cultivation and he was the protected tenant of the entire extent of land. Actually, the tenant-Gopaji was in actual possession of the land to an extent of Ac.27.16 gts, as per his own statement given in File No.B5/1821/69. During the survey, the said extent of Ac.27.16 gts was located in Sy.Nos.652, 656 and 657 and the remaining extent of Ac.34.16 gts was located in Sy.Nos.653, 654 and 655. As the Tenant-Gopaji had sub-leased

some part of land under his tenancy to one K.Sayanna, the landlord terminated the tenancy of the entire land forming part of old Sy.No.396/1, corresponding to new Sy.Nos.652 to 657 by issuing a notice dated 07.10.1968 to the Tenant-Gopaji, which was received by him on 08.10.1969.

4. Thereafter, the landlord filed an application in Case No.B5/1821/1969 before the Tahsildar, Shadnagar (Farooqnagar) for recovery of possession of the land in Sy.Nos.652, 656 and 657 from the possession of the tenant-Gopaji and the sub-tenant. After due enquiry, the Tahasildar, by order dated 19.02.1974 accepted the termination of the tenancy and directed eviction of tenant-Gopaji and the sub-tenant. Aggrieved thereby, the tenant-Gopaji filed an appeal in Case No.B7/1/1974, and the District Revenue Officer, by order dated 26.11.1974 dismissed the said appeal. The tenant-Gopaji filed CRP No.113 of 1975 before this Court and the same was also dismissed, by order dated 07.10.1976 and thus, the termination of the tenancy was confirmed. Consequently, the landlord-Siddiqui was put in possession of the lands in Sy.Nos.652, 656 & 657 and the tenancy rights in respect of the entire land in old Sy.No.396/1 were rounded off in the Tenancy Register.

5. While so, after the death of the Tenant-Gopaji, his grandsons, the respondents herein, filed an application before the Mandal Revenue Officer, Shadnagar in Case No.C/70/90 against the Landlord-Siddiqui for recovery of possession of the lands in Sy.Nos.653, 654 and 655, stating that the landlord has illegally dispossessed the Tenant-Gopaji in 1974-75, since the termination was only in respect of the lands in Sy.Nos.652, 656 and 657 and it does not cover the lands in Sy.Nos.653, 654 & 655. The

landlord-Siddiqui filed detailed counter rebutting the contentions of the respondents. During enquiry, the landlord-Siddiqui expired, and ultimately, the Mandal Revenue Officer, by order dated 07.11.1998, dismissed the application of the respondents as abated for not impleading the legal heirs of the landlord, and the said order was communicated to the respondents herein on 13.11.1998.

6. After 8 years, the respondents filed an application in the month of October, 2006 before the Mandal Revenue Officer for certified copy of the order dated 07.11.1998, for which, the Mandal Revenue Officer issued a Memo, dated 18.10.2006, informing that the file is not traceable. Basing on the said memo, the respondents filed an appeal in the year 2007 before the Joint Collector, Mahaboobnagar, stating that they came to know about the passing of the abatement order in the year 2005. The revision petitioners filed a detailed counter in the said appeal. But, without affording any opportunity to the petitioners, the Joint Collector allowed the appeal, by order dated 16.06.2007, and remanded the matter to the Tahsildar for *de nova* enquiry. Aggrieved thereby, the petitioners filed CRP No.4188/2007 and the same was allowed vide orders of this Court, dated 01.12.2008, remanding the matter to the Joint Collector, directing him to decide the matter giving opportunity of being heard to the petitioners.

7. By the impugned order, dated 27.01.2010, the Joint Collector, without considering the pleadings and objections of the petitioners, remanded the matter to the Tahsildar, Shadnagar for *de novo* enquiry. While remanding the matter to the Tahsildar, the Joint Collector gave a finding that there is no termination of tenancy in respect of the lands in

dispute i.e., the lands in Sy.Nos.653, 654 and 655 of Chatanpally village. Hence the revision.

8. The main case of the respondents, who are the grandsons of the Tenant-Gopaji, is that the termination of tenancy is only in respect of an extent of Ac.27.16 gts in Sy.Nos.652, 656 and 657 and the remaining extent of Ac.32.16 gts is still in protected tenancy in the name of Tenant-Gopaji.

9. After having heard the submissions of the learned Counsel appearing for the petitioners and respondents extensively, what is felt is that the scope of the enquiry in the present revision cannot be extended beyond the aspect as to whether the order of remand passed by the Joint Collector which is impugned in the present revision is just and proper or whether it needs to be set aside?

10. As noticed from the preceding discussion, the controversy in between the parties is limited to the extent of about Acs.30.00 of land in Sy.Nos.653, 654 and 655 and there is no controversy insofar as an extent of Acs.27.17 gts., of land in Sy.Nos.652, 656 and 657 are concerned. Admittedly, the father of the petitioners is a landlord and the grandfather of the respondents was the protected tenant in respect of the entire extent of land admeasuring Acs.60.00 which was in Sy.No.396/1. It is also not in controversy that subsequently in resurvey, the said land was divided into six survey numbers. Insofar as the land in Sy.Nos.652, 656 and 657 are concerned, the grandfather of the respondents by name Katike Gopaji has been evicted on the grounds that he sub-let the same to one Sayanna. All these happened in the year 1972 and it became final as has been confirmed by the High Court. However, the controversy is as to whether the said Protected Tenant- Katike Gopaji is also evicted from the

remaining land in accordance with law as contended by the landlord in the year 1974 itself. The legal heirs of the original landlord submit that the tenancy of Katike Gopaji in respect of the entire land in old Sy.No.396/1 was terminated legally, which is denied by the grandchildren of the said Katike Gopaji. According to them, the original protected tenant was illegally dispossessed from the remaining land. Therefore, when the alleged dispossession is said to have taken place in the year 1974, only in the year 1990 the grandchildren of Katike Gopaji have filed an application before the MRO, Farooqnagar, Shadnagar for recovery of possession of the remaining land. The said application was disposed of by the MRO on 07.11.1998 solely on the ground that even though the original landlord namely the father of the revision petitioners died, no steps, whatsoever, have taken to implead the legal heirs, hence the representation of the respondents was dismissed as having been abated.

11. Aggrieved by the said order, the respondents preferred appeal before the Joint Collector, which as already stated, was disposed of by the learned Joint Collector on 16.06.2007 remanding the matter back to the MRO for *de novo* enquiry and disposal. Various contentions are advanced on either side. According to the petitioners, the respondents are not the only legal representatives of the deceased Katike Gopaji and even though other legal representatives are still alive, they did not make any application which is mandatory. It is also submitted that the legal representatives had knowledge about the death of the sole landlord but still no steps whatever are taken for considerably long time. Further more, the respondents did not make any application as required by law. However, these contentious issues need not be dealt with at present for the reason that the order passed by the M.R.O. is appealable before the

Joint Collector and the Joint Collector is required to adjudicate the same on merits. In the instant case, the Joint Collector did not do so but instead remanded the matter back to the M.R.O. for *de novo* enquiry. However, while doing so, the learned Joint Collector made certain observations on merits of the case which ought not to have been done. Therefore, the learned Counsel appearing for the revision petitioners submits that while remanding the matter, the Joint Collector made certain observations, which completely affects proper and effective adjudication of the dispute by the M.R.O. to whom the matter has been remanded for *de novo* enquiry.

12. The factual aspect is in controversy i.e., whether the tenancy of Katike Gopaji was terminated over the entire extent of Acs.60.00 of land in accordance with law or whether it was only in respect of about Acs.27.17 gts. This aspect is to be effectively be adjudicated by the primary authority with reference to the evidence and the material on record.

13. Having considering the material on record, as noted above, without adverting to the rival contentions, I feel that it is just and proper to sustain the order of remand made by the Joint Collector, subject, however, to observation that none of the observations made by the learned Joint Collector in the order of remand, shall, in any way, influence the M.R.O. in disposal of the application of the respondents strictly in accordance with law.

14. In view of the foregoing discussion, it is held that the impugned order of the Joint Collector cannot be said to be in any way erroneous warranting any interference but however the observations made by him

while remanding the matter need not be taken note of by the primary authority while adjudicating the same.

15. In the result, the revision petition is dismissed confirming the order of the Joint Collector, Mahabubnagar, made in Case No.F1/10/2009, dated 27.01.2010 insofar as it is in respect of remanding the matter to the M.R.O., Farooqnagar, Shadnagar, directing him to conduct *de novo* enquiry and dispose of the case No.C/70/90 after affording reasonable opportunity to both the parties to put forth their respective claims along with the evidence is concerned. The learned M.R.O. is directed to dispose of the said application on merits without being influenced by any of the observations made by the Joint Collector in the impugned order, preferably, within a period of 3 (three) months from the date of receipt of a copy of this order. No order as to costs.

Date: 11th August, 2017
Dsr/smr

M.S.K.Jaiswal, J

