

**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**W.P.NO.14819 OF 2006**

**ORDER:**

This writ petition is filed seeking to declare the action of the first respondent in rejecting the appeal filed by the petitioners in Case No.F2/7865/2000, dated 25.3.2006, confirming the order passed by the second respondent in Case No.A/327/2000, dated 21.09.2000 for grant of succession under Section 40 of the A.P., (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short the Act), as illegal, arbitrary and contrary to the provisions of natural justice and consequently direct the respondents 1 and 2 to recognize the petitioners as Tenancy Holders being successors of the protected tenant late Pallati Yella @ Yellaiah in respect of the land admeasuring Ac.125.12 guntas in Sy.Nos.334, 335, 336, 337, 338, 339, 341 and 342, situated at Nomula Village, Manchal Mandal, Ranga Reddy District.

2. It is the case of the petitioners that they are the legal heirs and successors of late Pallati Yella @ Yellaiah who was the protected tenant in respect of the land admeasuring Ac.125.12 guntas in Sy.Nos.334, 335, 336, 337, 338, 339, 341 and 342, situated at Nomula Village, Manchal Mandal, Ranga Reddy District. After the death of Pallati Yella @ Yellaiah on 15.01.1992, the petitioners, being the successors and legal heirs of late Pallati Yella @ Yellaiah, made an application under Section 40 of the Act before the second respondent on 23.3.2000 for grant of succession certificate. The petitioners also submitted the genealogy table and

claimed that they are entitled to get the succession of tenancy rights and they also filed extracts of tenancy rights and pahanies for the year 1995-96. The second respondent by order dated 21.9.2000 rejected the application with out appreciating the evidence and without looking into the record. Aggrieved by the said order, the petitioners filed an appeal before the first respondent in Case No.F2/7865/2000 under Section 90 of the Act who also rejected the appeal by his order dated 25.3.2006, confirming the order of the second respondent. Aggrieved by the above orders, the present writ petition is filed.

3. In contra, the claim of the third respondent is that he is the son of the original landlord and there are no protected tenant for their lands; that the application of the petitioners needs no consideration and that the orders passed by the respondents 1 and 2 rejecting the application of the petitioners is just, and valid and therefore prayed to dismiss the writ petition.

4. Heard.

5. The present writ petition was dismissed by this Court on 20.07.2006, holding that the petitioners had the alternative remedy of further appeal under Section 90(2) of the Act. Aggrieved by the said order, the petitioners filed Writ Appeal No.1145 of 2006 and the Division Bench of this Court by Judgment dated 06.02.2017, set aside the said order and restored the writ petition to its file for further consideration.

6. It is stated that in pursuance of the application filed by the petitioners under Section 40 of the Act, the second respondent invited objections, in pursuance of which, the third respondent herein filed objections stating that he is the son of Gulam Mahmood, resident of Agapally village of Manchala Mandal and he is the owner and possessor of the subject lands and he also made a counter claim before the second respondent.

7. The second respondent prima facie confirmed that the petitioners are the legal heirs of Pallati Yella @ Yellaiah. In view of the name of late Yellaiah being found in part of the record and in the registers and again not being found in some places in the registers, he expressed suspicion for considering the application of the petitioners. In the light of the objections of the third respondent, the second respondent came to the conclusion that the petitioners are not entitled for grant of succession of protected tenancy rights and as such, the application is not maintainable and therefore rejected the same. It is stated in the order of the second respondent that enquiry was conducted by the Additional Mandal Revenue Officer apart from local enquiries and reports were submitted. But, the second respondent has not mentioned about the details of the enquiry, the persons examined, the notices served, the nature of enquiry and the details of enquiry and also the details of the records and registers basing on which he came to the conclusion. The said act of the second respondent throws a doubt about the manner in which he has passed the order.

8. The petitioners filed an appeal under Section 90 of the Act before the first respondent against the orders passed by the second respondent dated 21.09.2000. The first respondent by order dated 25.03.2006, rejected the appeal. The first respondent observed that he verified the protected tenancy register and kasra pahani and the name of the father of petitioners was not figured as protected tenant, though Section 40 of the Act declares that all rights of protected tenants shall be heritable and the petitioners who are the legal heirs of the protected tenant, their rights cannot be extinguished.

9. The relationship of the petitioners with late Pallati Yella @ Yellaiah as father and sons and the death of said Yellaiah were not in dispute. The issue in this writ petition is whether late Yellaiah was the protected tenant or not. The first respondent has not given any finding with regard to the protected tenancy registers. He relied on kasra pahies and in the absence of the protected tenant's name, the application of the petitioners for grant of succession of protected tenancy rights has been rejected. It shows that the first respondent has not examined the entire records and to his convenience, he has chosen to rely only on part of the records.

10. It is pertinent to note that the second respondent has observed that the extracts of the protected tenancy rights register at Column No.9, the names of one Syed Galib and Yellaiah etc., (vagaira in Telugu) are entered. There cannot be different versions when it pertains to the findings of the official respondents basing on the records. It is pertinent to note that the second respondent

being the custodian of the records, cannot give a finding in casual manner and first respondent being the appellate authority without verifying the entire records also stick to one line of opinion basing on limited records.

11. The third respondent also filed a suit in O.S.No.115 of 2002 on the file of the Court of Junior Civil Judge, Ibrahimpatnam, Ranga Reddy District. In the written statement filed in the above suit, defendant No.1 categorically stated that he is the son of the co-protected tenant late Syed Galib and defendant No.1 being the successor of Syed Galib has also admitted about the fact that the other protected tenant was Yellaiah i.e., father of the petitioners herein.

12. In the counter claim, O.S.No.60 of 2003 was filed by the legal representatives/successors of the co-tenant Syed Galib against the third respondent. The Court below has dismissed O.S.No.115 of 2002 filed by the third respondent and others and O.S.No.60 of 2003 was allowed by Judgment dated 27.03.2006. One Mr.S.Rajesh Kumar, Mandal Revenue Officer, Manchal was examined as Dw.4 and he deposed that some papers from Ex.X1 and Exs.B18, B77 and B78 are not available. Ex.X1 being the original protected tenancy register of Nomula village and Exs.B77 and B78 being the extracts of the protected tenancy register and since they are missing, it creates suspicion upon the office of the second respondent, the manner in which they are preserving the records and the second respondent being the custodian and the first respondent being the appellate authority, the casual manner

in which their approach towards the Government records and towards the citizens is atrocious. The memo filed in A.S.No.136 of 2006 which was filed against the judgment in O.S.No.115 of 2002 stating that the appeal be allowed as the party has no objection, gives rise to several doubts with regard to the claims.

13. Earlier W.P.No.13679 of 2006 was filed by one Syed Abdul Majid and others, the legal representatives of Syed Galib and this Court has dismissed the said writ petition on 07.07.2006 on the issue pertaining to Section 40 of the Act. Aggrieved thereby, W.A.No.1144 of 2006 was filed and the same was dismissed on 7.10.2015.

14. The third respondent filed O.S.No.120 of 2000 on the file of the Junior Civil Judge, Ibrahimpatnam against some of the petitioners herein for perpetual injunction in respect of Ac.5-12 guntas in Sy.No.337 only and the same was allowed. The said suit was filed subsequent to the petitioners filing application before the second respondent under Section 40 of the Act. In the above suit, it is contended that on 24.09.2000 the petitioners herein drove number of cattle into the suit land for grazing. The fact pertaining to the application filed by the petitioners under Section 40 of the Act and their claim as protected tenants is discussed in the judgment. The appeal filed by the petitioners against the said judgment in A.S.No.238 of 2007 was dismissed by judgment dated 10.10.2011.

15. Reliance has been placed on **B.Bal Reddy Vs. Teegala Narayana Reddy**<sup>1</sup> and **Sada and etc. etc., Vs. The Tahsildar, Utnoor, Adilabad District**<sup>2</sup>, wherein a Division Bench of this Court in **Syed Abdul Majid Vs. Joint Collector II, Ranga Reddy District**<sup>3</sup> pertaining to the very same subject land of this writ petition was also dealt.

16. It is needless to observe that in view of the adverse possession, it is not possible for this Court to make comments on the issue of adverse possession as the entire claim runs around the issue of protected tenancy and in view of disputed questions of facts and a blatant error committed by the original and appellate authorities i.e., respondents 1 and 2 herein for not deciding the application basing on the records, is unjust and without application of mind.

17. When it becomes necessary to hold that in view of the discrepancies in the records and admitted fact by the custodian of the record about the non-availability of certain registers, it would be appropriate for this Court to get the disputes resolved by the competent civil court.

18. In view of the observations made against the orders passed by the official respondents 1 and 2, both the impugned orders are set aside without expressing any opinion about the entitlement of the petitioners and un official respondents with regard to their right, title and interest upon the subject land.

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<sup>1</sup> 2017(1) SCJ 426

<sup>2</sup> AIR 1988 AP 77

<sup>3</sup> 2006 (5) ALT 754

19. Accordingly, the writ petition is disposed of, directing the parties to approach the competent civil Court for redressal of their grievance. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

**T.AMARNATH GOUD,J**

Date: 26-06-2018

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