

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.3349 OF 1996, C.R.P.No.282 OF 2000

&

W.P.No.19946 OF 1996

COMMON ORDER:

Heard Mr.M.S.N.Prasad, Mr. E.Madan Mohan Rao for petitioners, learned Government Pleader for official respondents, Mr.M.V.S.Suresh Kumar, learned senior counsel, Mr.K.Jaya Kumar and Mr.P.C.Shekhar for unofficial respondents.

The subject matter of these cases is an extent of Acs.1-30 Gts in Sy.No.62, Ac.1-00 in Sy.No.63 and Acs.0-17 Gts in Sy.No.64 of Thokatta Village, presently in Trimulgherry Mandal.

The orders under challenge are passed under the A.P (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'Act 1950').

The circumstances and contentions leading to filing of the revisions and writ petition are similar in these cases with a few independent circumstances pleaded by parties. Hence, these cases are disposed of by this common order.

The contest in the cases on hand is amongst three families viz., Aluuri (petitioners in C.R.P.No.3349 of 1996 and W.P.No.19946 of 1996), Karnatakam (petitioners in C.R.P.No.282 of 2000) and Bandigari (respondents in revisions and writ petition)

PRAYERS IN C.R.P.No.3349 of 1996 & W.P.No.19946 of 1996

C.R.P.No.3349 of 1996 is filed under Section 91 of Act 1950 challenging the orders of Revenue Divisional Officer in file

No.B/6074/94 dated 01.02.1995 and Joint Collector, Hyderabad in Case No.B2/1613/1995 dated 17.08.1996, as illegal, violative of principles of natural justice and arbitrary.

W.P.No.19946 of 1996 is filed for Mandamus declaring the provisional and final lists of tenants issued by the Additional Revenue Divisional Officer under Section 38-E of Act 1950 in respect of subject matter of writ petition vide Certificate No.B/6074/1994 - IRW/B2/1975 dated 01.02.1995 and the order in Case No.B2/1613/1995 dated 17.08.1996 of Joint Collector as null and void.

AVERMENTS IN C.R.P.No.3349 OF 1996 & W.P.No.19446 OF 1996

The case of Aluuri/petitioners, briefly stated, is that A.Parvathalu/1st petitioner and later Mallesha, s/o Kashanna, by purchase from B.V.Prakash Reddy, the predecessor-in-title and possessor of subject matter vide registered sale deed No.1789/1964, are the owners and possessors of subject matter. Bandigari Sathaiah, it is alleged, was cultivating the subject matter as protected tenant, declined the offer of B.V.Prakash Reddy to purchase the subject matter and on 28.11.1960 Bandigari Sathaiah voluntarily surrendered his protected tenancy right to B.V.Prakash Reddy. With the voluntary surrender of tenancy right, Sathaiah ceased to be in possession of subject matter. The petitioners ever since the purchase of property claim to be in actual and physical possession of the subject matter. On 11.06.1981, Bandigari Sathaiah died and thereafter respondents 4 to 6 i.e., wife and children of Sathaiah, on 24.10.1985, filed petition before

3rd respondent as legal representatives of B.Sathaiah and prayed for recovery of possession under Section 32 of Act 1950. The petitioners have opposed the claim for possession and in the course of enquiry before the Mandal Revenue Officer/ 3rd respondent, respondents 4 to 6 produced certificate under Section 38-E of Act 1950. In support of Section 38-E certificate, respondents 4 to 6 also produced final list of protected tenants allegedly declared on 13.07.1975. The Aluuri family/petitioners had thereafter filed appeal before the Joint Collector questioning the certificate dated 01.02.1995 issued under Section 38-E in favour of Bandigari Sathaiah. The Joint Collector dismissed the appeal through order dated 17.08.1996. Hence, the revision.

Aluuri Parvathalu and others challenge the provisional and final lists showing the name of Bandigari Sathaiah as protected tenant, as illegal, violative of principles of natural justice and unconstitutional.

AVERTMENTS IN C.R.P.No.282 OF 2000:

C.R.P.No.282 of 2000 is filed under Section 91 of Act 1950 challenging the orders of Collector, Hyderabad District in Appeal Case No.B2/6751/95 dated 16.05.1998, as illegal, violative of principles of natural justice and arbitrary.

Karnatakam Pramila, w/o late Karnatakam Swamy filed appeal questioning the certificate issued under Section 38-E dated 01.02.1995 in favour of Smt.B.Chittemma, w/o B.Sathaiah etc. In the appeal filed by K.Pramila, the members of other two families viz., Bandigari and Aluuri are shown as party respondents. The case of

K.Pramila and others is that Karnatakam Sathaiah and Bandigari Sathaiah were the protected tenants of subject matter. On 11.06.1981, Bandigari Sathaiah died and on 03.11.1988, Karnatakam Sathaiah died. Therefore, Karnatakam Pramila etc., are the successors-in-interest to the co-tenancy right held by Karnatakam Sathaiah along with Bandigari Chittemma, w/o late Sathaiah and others. According to K.Pramila, the exclusion of tenancy right of Karnatakam Sathaiah is illegal and violative of principles of natural justice. Further, the exclusion of right and title of late Karnatakam Sathaiah is behind the back of Karnatakam Sathaiah and, therefore, K.Pramila and others since stepped into the shoes of Karnatakam Sathaiah are persons affected by Section 38-E certificate dated 01.02.1995 issued in favour of Bandigari Sathaiah.

The case of K.Pramila and others, briefly stated, is that inclusion of Bandigari Sathaiah alone in the provisional tenancy register or final tenancy register suffers from violation of principles of natural justice and illegal and, therefore, Karnatakam Sathaiah also should have been shown as co-protected tenant of the subject matter.

Mr.M.S.N.Prasad contends that the entry of Bandigari Sathaiah either in provisional tenancy list or final tenancy list suffers from violation of principles of natural justice and contrary to the procedure prescribed under Act 1950 read with the Rules made thereunder. According to Mr.Prasad, the very grant of Section 38-E certificate and preparation of provisional and final lists of

tenancy by including the name of Bandigari Sathaiah is contrary to the surrender of right of tenancy by Bandigari Sathaiah in favour of landlord as early as 1960. The names of Aluuri Mallesha etc., are reflected in revenue records from 1963-64 onwards, hence a plea inconsistent to record and against Aluuri Mallesha etc., can be considered or taken in the presence of the party affected i.e., Aluuri Mallesha, but not behind their back. He prays for setting aside the order in C.R.P.No.282 of 2000 and remanding the matter to the Joint Collector for consideration and disposal in accordance with law.

Mr.Prasad, in support of his contention that the principles of natural justice are violated in preparation of provisional and final lists, without prejudice to his principal objection, contends that not only Aluuri Mallesha and others are aggrieved by the order including the name of Bandigari Sathaiah in PT register but also Karnatakam Sathaiah who claims to be a co-protected tenant also complains that there was no enquiry while preparing the register. He prays for settling aside the impugned orders and remanding the matter to the Joint Collector for fresh decision.

Mr.EMadan Mohan Rao contends that the inclusion of Bandigari Sathaiah alone as protected tenant is contrary to the record right from 1954-55 onwards. Neither Karnatakam Sathaiah nor Bandigari Sathaiah surrendered the protected tenancy right. Therefore, the purchase by Aluuri Parvathalu and another is illegal, void and unenforceable against protected tenants or their successors-in-interest. The claim for recovery of

possession by Bandigari Sathaiah alone is incorrect. In support of his case, Mr.E.Madan Mohan Rao relied on a few certified copies of revenue record issued by the revenue authorities.

The Joint Collector failed to exercise his jurisdiction when appeal is filed against the order of Revenue Divisional Officer. He contends that the consideration and dismissal of appeal by referring to order passed in Case No.B2/1613/1995 i.e., subject matter of C.R.P.No.3349 of 1996 is illegal and untenable. According to him, the grant of protected tenancy right to Bandigari Sathaiah alone is contrary to record and the Joint Collector ought to have exercised his jurisdiction independently in the appeal filed by Karnatakam Pramila and others, enquire into the matter within the scope and jurisdiction of Section 90 of the Act and ought to have passed the orders. The order impugned in C.R.P.No.282 of 2000 is liable to be set aside and matter remanded to the Joint Collector for consideration and disposal in accordance with law.

Mr.M.V.S.Suresh Kumar in response to Mr.M.S.N.Prasads' argument contends that surrender claimed by Aluuri Mallesha is illegal and unless and until Section 19 of Act 1950 is complied with, the dispossession or abandonment, as a matter of course, is not inferred. He submits that the record as on date is sufficient to dismiss all the three cases. As regards argument of Karnatakam family is concerned, he fairly states that the order of Joint Collector dated 17.08.1996 needs re-consideration by the Joint Collector.

On 23.01.2018, this Court has already directed production of pahanies, provisional and final protected tenancy lists etc.

The respondents produced the record, including the original files in appeal No.B2/6571/1996 and revisions. The Joint Collector, Revenue Divisional Officer and the Mandal Revenue Officer are present in the Court:

- i) Provisional list of protected tenants list
- ii) Final list of protected tenants list
- iii) Final records of agricultural tenancy Thokatta Village
- iv) Sesala Pahani for the year 1955-58 of Thokatta Village
- v) Pahani copy of Thokatta Village for the year 1963-64
- vi) Pahani copy of Thokatta Village for the year 1967-68

The learned counsel appearing for the parties, after taking note of the rival submissions and perusal of record, have alternatively contended that this Court, if, after examining the record considers respective submissions and records a finding on any of the issues of entitlement of one or the other party, the aggrieved person by such conclusion would be prejudiced, for the enquiry conducted in the appeals pending before the Joint Collector is limited. The examination of record by this Court and thereafter rendering findings thereon would affect one or the other party. The aggrieved party against such conclusion will lose statutory remedy and hence have requested this Court not to record findings on rival contentions. After perusing the record produced by the Joint Collector, this Court *prima facie* is of the view that the order of Joint Collector suffers from illegality, for the order is passed without examining the record relating to subject matter of cases, including the records now produced before this Court. The findings recorded in Case No. B2/1613/1995 against

Aluuri family are without putting them on notice at any stage of enquiry by the Revenue Divisional Officer. May be a few of the objections now raised by Mr.M.V.S.Suresh Kumar against exclusion of rights of protected tenancy are available to protected tenants, but that is an issue on which either the primary authority or the appellate authority is required to examine the circumstances, look into record and thereafter render a finding. Adverting to the order in C.R.P.No.282 of 2000, it is evident that the Joint Collector has not examined the record produced by Kamatakam Pramila and others in support of their claim for tenancy rights. In view of the order passed in case No. B2/1613/1995, the appeal filed by Kamatakam Pramila is heard and disposed of. The procedure followed in disposing of appeal is unsustainable and illegal.

This Court perused the orders impugned in the revisions. Remanding a case for decision to appellate authority, after considerable length of time, as far as possible, ought to be avoided, but at the same time to avoid remanding a case to an authority which failed to exercise its jurisdiction, this Court, if takes up the responsibility of the appellate authority and examines each one of the issues on merits, as rightly contended by the counsel for the parties, prejudice will occasion to one party or the other. Such course ought to be avoided. To meet the ends of justice and to resolve the real issue between the parties, upon due consideration of record produced by respondents, this Court considers it appropriate to set aside the orders in appeal Nos.B2/ 1613/1995 & B2/6571/1996 as not conforming to the material on record and suffers from failure to exercise the jurisdiction under

Section 90 of Act 1950, and restore appeals to file of Joint Collector for consideration and disposal in accordance with law and record.

For the above reasons, this Court is of the view that the orders in revisions are liable to be set aside and matters remanded to the Joint Collector for consideration and disposal as expeditiously as possible, preferably within four months from the date of receipt of copy of this order. The Joint Collector and the Revenue Divisional Officer who are present in Court consented to disposing of the appeals viz., appeal Nos.B2/1613/1995 & B2/6571/1996 after remand within four months from the date of receipt of copy of this order. The statement is placed on record and accepted.

Coming to writ petition, after perusing the record and keeping in view the orders passed in C.R.P.Nos.3349 of 1996 and 282 of 2000, this Court is of view that the prayer in this writ petition cannot and ought not be considered or examined, for the consideration would go to the root of issues now directed to be considered and disposed of by the Joint Collector upon remand by this Court. Hence, by leaving all objections open in this behalf to be urged before the Joint Collector, the writ petition is disposed of.

Hence, the following order:

The revisions are allowed and the orders impugned are set aside. The appeals i.e., appeal Nos.B2/1613/1995 & B2/6571/1996 are restored to file before the Joint Collector for consideration and disposal in accordance with law. Writ petition is disposed of by leaving it open to petitioners to raise objections available in law in

the appeals pending before the Joint Collector. There shall be no order as to costs.

Pending miscellaneous petitions, if any, stand closed.

Registry is directed to despatch the record in appeal Nos.B2/1613/1995 & B2/6571/1996 to Joint Collector, Hyderabad within four weeks from today.

S.V.BHATT, J

20th February, 2018

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