

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HON'BLE MS JUSTICE J. UMA DEVI

+ W.P.NO.29293 of 2010

% Date: 17-07-2018

Between:

1. Kurma Swamy, S/o. Late Komaraiah, Madeenaguda, Hyderabad.
2. Kurma Narsimha, S/o. Late Komaraiah, Madeenaguda, Hyderabad.
3. Kurma Anantatyya, S/o. Late Komaraiah, Madeenaguda, Hyderabad.
4. Kurma Mallesh, S/o. Late Komaraiah, Madeenaguda, Hyderabad.
5. Kurma Sreenu, S/o. Late Komaraiah, Madeenaguda, Hyderabad.
6. Kurma Veeresh, S/o. Late Komaraiah, Madeenaguda, Hyderabad.
7. Kurma Beerappa, S/o. Late Komaraiah, Madeenaguda, Hyderabad.
(petitioners 1 to 7 are represented by their GPA Sri M.V. Krishna Reddy)
8. Sree Venkateswara Builders, a partnership Firm, 7-27, Sangeet Nagar, Kukatpally, Hyderabad rep. by its Managing Partner M.V. Krishna Reddy.
9. M.V. Ramana Reddy, S/o. M. Peda Chenchu Reddy, Plot No.923, Vivekananda Nagar Colony, Kukatpally, Hyderabad.
10. Dandu Subba Raju, S/o. D. Soma Raju, Flat No.409, Green Block, Myhome Rainbow Apartments, Shaikpet Nala, Tolichowki, Hyderabad.
11. Dadu Srinivasa Raju, S/o. Satyanarayana Raju, Plot No.524, Vivekananda Nagar Colony, Kukatpally, Hyderabad.
12. D.V.R.L.L. Narasimha Raju, S/o. Satyanarayana Raju, 33/A, 1st Floor Srinivasa Nagar Colony (West), S.R. Nagar, Hyderabad.
13. V.V.L. Narasimha Raju, S/o. Jagannadha Raju, Saibaba Nagar, Phase III, Behind Metro, Kukatpally, Hyderabad.
14. M. Soumya, W/o. Balakrishna, 4-190-91, Bhasker Rao Nagar, Sainikpuri, Secunderabad.
15. M. Balakrishna, S/o. Yugandhar Rao, 4-190-91, Bhasker Rao Nagar, Sainikpuri, Secunderabad.
16. Richi Interiors, a partnership firm rep. by its managing Partner K. Ravikanth, 6-3-571/2, Ground Floor, Rook Vista, Somajiguda, Hyderabad.

... Petitioners

And

1. Government of Andhra Pradesh, rep. by its Principal Secretary, Revenue (UC.III) Department, Secretariat, Hyderabad.
2. Chief Commissioner of Land Administration, Nampally Station Road, Hyderabad.
3. Special Officer & Competent Authority, Urban Land Ceiling, Nampally, Hyderabad.
4. District Collector, Ranga Reddy District, Lakdika Pool, Hyderabad.
5. Greater Hyderabad Municipal Corporation, rep. by its Commissioner, Nar Tankbund Hyderabad.
6. The Tahsildar, Serilingampalli Mandal, Ranga Reddy District.
7. Mr. Raj Kishan Pershad, S/o. Hari Kishan Pershad, 1-35-462/2, Rasoolpura, Secunderabad.
8. Mr. Prem Kishan Pershad, S/o. Hari Kishan Pershad, 1-35-462/2, Rasoolpura, Secunderabad.

... Respondents

! Counsel for the Petitioner s : Mrs. Chitra Sampath, Sr.C

^ Counsel for Respondents 1 to 4 : G.P. for Revenue (A.P)

^ Counsel for Respondent No.5 : Standing Counsel for GHMC

^ Counsel for Respondents 7 & 8 : Mr. T. Surya Satish

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? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS JUSTICE J. UMA DEVI

W.P.NO.29293 of 2010

ORDER: (per VRS,J.)

Aggrieved by an order passed by the Special Officer and Competent Authority, Urban Land Ceiling, directing the Tahsildar to re-deliver possession of the land originally declared as surplus, to the persons who filed declarations under the Urban Land Ceiling Act, the legal heirs of the protected tenant and persons, who claim to have purchased the lands from them, have come up with the above writ petition.

2. Heard Smt. Chitra Sampath, learned senior counsel appearing for the petitioners herein, the learned Government Pleader (Revenue) (AP), the learned standing counsel for the Municipal Corporation and Mr. T. Surya Satish, learned counsel for the respondents 7 and 8.

3. The facts pleaded by the petitioners in the affidavit in support of the writ petition, are as follows:

- A. That one Smt. Nihayan Bibi was the original pattedar in respect of the lands in Survey Nos. 31,54,54AA and 55 of Madinaguda Village, R.R. District;
- B. That by the proceedings dated 15.05.1975 issued by the Revenue Divisional Officer under Section 38E of the Andhra Pradesh (Telangana area) Tenancy and Agricultural Lands Act, 1950, a certificate was issued in favour of one Kurma Komaraiah, on the premise that he was a protected tenant in respect of the land measuring Acres 8.39 guntas in Survey No.31 and Acres 11.18 guntas in Survey No.54of Madinaguda village;

- C. That after the death of Nihayan Bibi, the original pattadar, her daughters Smt. Champa Devi and Har Kuvar Pershad became the successors;
- D. That during the lifetime of both of them, those two daughters entered into an agreement with the protected tenant Kurma Komaraiah in the year 1980 to sell certain lands in his favour;
- E. That on the basis of the said agreement, the protected tenant Kurma Komaraiah filed an application on 07.03.1996 before the Revenue Divisional Officer seeking to purchase the lands of an extent of Acres 8.17 guntas in Survey No.54/AA and Acres 13.13 guntas in Survey No.55;
- F. That by consent of the parties, the Revenue Divisional Officer passed an order on 20.07.1996 under Section 38(1) of the Tenancy Act of 1950, directing the issue of a sale certificate in respect of the lands in Survey nos. 54 and 55;
- G. That as against the said order, a statutory appeal was filed under Section 90 of the Tenancy Act, 1950 before the Joint Collector, by a society by name Vigneswara Cooperative House Building Society Ltd;
- H. That the appeal was dismissed by the Joint Collector by an order dated 13.04.1998;
- I. That the Cooperative Society filed a Civil Revision Petition in CRP No. 2092 of 1998 under Section 91 of the Tenancy Act, 1950, but the same was dismissed by this Court on 10.02.2000 and the Special Leave Petition arising out of the same was dismissed by the Supreme Court on 01.12.2000;
- J. That the petitioners 1 to 7 herein are the legal heirs of the protected tenant Kurma Komaraiah;

- K. That the petitioners 1 to 7 herein entered into an agreement of sale-cum-GPA with the 8th petitioner herein, in respect of land of an extent of about Acres 16;
- L. That the 8th petitioner sold part of the same to petitioners 9 to 16 herein and thus the writ petitioners 1 to 16 herein became entitled to these lands;
- M. That the pattadars Champa Devi and Har KuWar Pershad filed a declaration under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976, in respect of the lands held by them, including the lands purchased by the petitioners;
- N. That the declaration so filed was enquired into by the Competent Authority who passed an order dated 20.08.1985, determining an area of 1,20,798 Sq. mts of land as surplus land;
- O. That in the declaration filed by the pattadars, they claimed to have sold the land to the Cooperative Society, delivered possession to them and also applied for exemption under Section 20 of the Urban Land Ceiling Act;
- P. That the sale of the land in Survey Nos. 54 and 55 was not brought to the notice of the Competent Authority, Urban Land Ceiling and hence he proceeded with the determination of the surplus and issued notice under Section 10(5) of the Urban Land Ceiling Act;
- Q. That subsequently by a panchanama dated 20.06.1998, they claimed to have taken over possession from the protected tenant Kurma Komaraiah and his sons;
- R. That the protected tenant filed appeals and they were allowed by the Commissioner by proceedings dated 21.04.2003 and the matter was remanded back to the Competent Authority;

- S. That after giving opportunity to the protected tenant, the Competent Authority again passed an order dated 03.05.2005 overruling the objections;
- T. That the protected tenant again filed an appeal before the Commissioner and the same was allowed once again by order dated 02.03.2006 and the matter remanded;
- U. That by a fresh order, the Competent Authority rejected the sale certificate issued in favour of the protected tenant under Section 38(1) of the Tenancy Act,1950 on the ground that by the time the said certificate was issued, the Urban Land Ceiling Act had already come into force;
- V. That once again the protected tenant filed an appeal and the same was allowed and the matter remanded by order dated 18.01.2007;
- W. That after the remand, when the proceedings were pending before the Competent Authority, the State of Andhra Pradesh notified the repeal of the Urban Land Ceiling Act with effect from 27.03.2008;
- X. That as a consequence the ULC proceedings abated;
- Y. That thereafter the respondents 7 and 8 in this writ petition gave a representation claiming that possession of the land was taken from them on 20.06.1998 and that therefore upon the proceedings under the Urban Land Ceiling Act getting abated, they are entitled to get back possession of the land;
- Z. That on the basis of the said representation, the 1st respondent issued a memo dated 25.09.2010 directing the 3rd respondent to act in accordance with law;
- AA. That the Chief Commissioner for Land Administration then issued a letter dated 02.11.2010 to the 3rd respondent, who in turn passed

the impugned order dated 09.11.2010 directing delivery of possession to respondents 7 and 8 and;

BB. That aggrieved by the said order, the legal heirs of the protected tenant and their alienees have come up with the above writ petition.

4. The grounds on which the impugned order of the 3rd respondent is challenged, are:

- (i) That even as per the panchanama dated 20.06.1998, the possession of the land was taken under the Urban Land Ceiling Act only from the petitioners 1 to 7 and hence if at all it has to be redelivered, it should be only to the petitioners and not to persons claiming under the declarants;
- (ii) That the petitioners 1 to 7, have already become the owners of the property by virtue of the certificate issued under Section 38(1) of the Tenancy Act, 1950 and hence possession of the land cannot be handed over to someone else;
- (iii) That the declarants Champa Devi and Har Kuvar Pershad have also already sold their lands under 5 registered sale deeds in the year 1982 in favour of the Cooperative Society and hence the legal heirs of the declarants are not entitled to seek re-delivery;
- (iv) That the impugned order was passed without notice to the petitioners and hence it is violative of the principles of natural justice and
- (v) That the very claim of the respondents 7 and 8 to be the legal heirs have not so far been tested before any Court.

5. Before dealing with the above contentions, we will have to bring on record a few missing episodes in the story with which the petitioners

have come up with the above writ petition. As we have narrated in paragraphs 3.A to I above, the protected tenant was issued with a certificate on 15.05.1975 under Section 38E of the Tenancy Act of 1950 in respect of two parcels of land. But after 21 years, he filed an application on 07.03.1996 before the Revenue Divisional Officer seeking an amendment to the certificate, so as to include certain other lands. Though by this time, the pattadars had (i) filed declarations under the Urban Land Ceiling Act, (ii) sold a portion of the property to a Cooperative Society and (iii) also claimed exemption on that basis under Section 20 of the Urban Land Ceiling Act, the land owners suppressed the same before the Revenue Divisional Officer and agreed to sell the very same land to the protected tenant. Blissfully ignorant of the sale already made in favour of the Cooperative Society and blissfully ignorant of the proceedings under the Urban Land Ceiling Act, the Revenue Divisional Officer passed an order on 20.07.1996, not amending the certificate issued 21 years earlier under Section 38E, but directing the issue of a certificate under Section 38(1) of the Tenancy Act, 1950, in respect of the additional lands. In fact as per the decision of the Division Bench of this Court in *Gadda Balaiah Vs. Joint Collector, Ranga Reddy District 2013 (4) ALD 725*, the provisions of the Urban Land Ceiling Act will prevail over the Tenancy Act of 1950 and even the protected tenant was covered by the Urban Land Ceiling Act, the moment the land came within the purview of the Urban Land Ceiling Act. Therefore the Revenue Divisional Officer did not even have jurisdiction on the date on which he passed the order under Section 38(1) of the Tenancy Act, 1950, on 20.07.1996.

6. It is true that the order dated 20.07.1996 was challenged unsuccessfully by the Cooperative Society, in a statutory appeal before the Joint Collector and in a revision before this Court and in a Special Leave Petition before the Supreme Court. But the individual allottees, through a newly formed society came up with a writ petition in the year 2006. On the basis of an observation made by this Court while dismissing the said writ petition, the newly formed society and some of its members, as well as the respondents 7 and 8 herein filed statutory appeals as against the original order dated 20.07.1996. These appeals were dismissed by an order dated 16.08.2008 by the Appellate Authority. Challenging the said order, a batch of 12 Civil Revision Petitions were filed before this Court. All those Revision petitions have been allowed by us today by a very detailed order running to more than 80 pages covering the whole gamut of factual and legal issues. In the said order, we have pointed out that the protected tenant and the original owner Har Kaur Pershad were guilty of fraud, collusion etc., in bringing forth a sale in 1996 in favour of the protected tenant in the proceedings under the Tenancy Act of 1950. Therefore, irrespective of the correctness of the order impugned in this writ petition, we do not wish to grant relief to the petitioners, who are the legal heirs and the legal representatives of the protected tenant.

7. In fact, as a result of the orders passed by us today, in the batch of 12 Civil Revision Petitions, the original order dated 20.07.1996 passed by the Revenue Divisional Officer directing the issue of a certificate under Section 38(1) of the Tenancy Act of 1950 has been set aside on the ground of fraud, collusion etc. Therefore the very basis on which the petitioners 1 to 7 herein, who are the legal heirs of the protected tenant, claim title to the property in question, has gone. Hence we do not wish to

go into the correctness of the impugned order, since we do not think the petitioners deserve any relief from the writ court

8. Primarily, the petitioners herein, who claim under the protected tenant, pitched their claim in this writ petition on two things namely, (i) that they have become the owners by virtue of the certificate issued under Section 38(1) of the Tenancy Act, 1950 and (ii) that it was only from them that the Competent Authority under the Urban Land Ceiling Act took possession of the lands in 1998 and hence the re-delivery should be made only to them.

9. The first thing on which the petitioners are pitching their claim, is now gone by virtue of the orders passed in the batch of Civil Revision Petitions. The second thing on which the petitioners are pitching their claim, is not established by them by producing the panchanama.

10. Therefore when the very basis on which the petitioners make a claim is dislodged, no relief can be granted to the petitioners and hence the writ petition is liable to be dismissed. The petitioners as well as the newly impleaded respondents, in the course of arguments, made conflicting claims about who is in possession of the land. While the petitioners claim that they continue to be in possession, the private respondents claim otherwise. But since we are dealing with a writ petition under Article 226, we cannot conduct an enquiry to find out who is in actual physical possession.

11. Therefore without recording any finding as to who is in actual physical possession and leaving it open to the parties to work out their remedies on the basis of the order passed by us today in the batch of Civil Revision Petitions, the writ petition is dismissed, on the sole ground that

the very basis of the claim of the petitioners stand uprooted by our order in the batch of Civil Revision Petitions. There will be no order as to costs.

12. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V.RAMASUBRAMANIAN, J.

J. UMA DEVI, J.

17th July, 2018
Js



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS JUSTICE J. UMA DEVI

W.P.NO.29293 of 2010

(per VRS, J.)



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