

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

+ WRIT PETITION No.26048 OF 2007

% 30—08—2018

Toomaju @ Vadla Bhaskar

...Petitioner

vs.

\$ The Sub-Collector, Asifabad,
Adilabad District and Others

... Respondents

!Counsel for the Petitioner : Sri V.Ravi Kiran Rao

^Counsel for Respondent Nos.1 to 3: Government Pleader for
Revenue (TS)

<Gist :

>Head Note :

? Cases referred

1987 (2) APLJ 397



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

* * * *

WRIT PETITION No.26048 of 2007

Between:

Toomaju @ Vadla Bhaskar

...Petitioner

And

The Sub-Collector, Asifabad,
Adilabad District and Others

... Respondents

JUDGMENT PRONOUNCED ON: 30.08.2018

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : Yes

T.AMARNATH GOUD, J

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.26048 OF 2007

ORDER:

This writ petition is filed challenging the order of the first respondent in Proc.No.E/1785/2001, dated 06.03.2007, whereunder he directed the third respondent to issue pattadar passbooks and title deeds in favour of the fourth respondent in respect of land admeasuring 3-15 acres in Sy.No.140 and 6-95 acres in Sy.No.141, situated at Khairgaon Village, Rebbena Mandal, Adilabad District.

2. It is the case of the petitioner that one G.Venkata Rao was the pattedar of the subject lands. The grandfather of the petitioner by name Vadla Narayana was the protected tenant of the subject lands. The second respondent, after causing due enquiry, issued an ownership certificate under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy & Agricultural Lands Act, 1950 (for short, the Tenancy Act), holding that the grandfather of the petitioner is the deemed owner of the subject lands with effect from 01.01.1973. After the death of his grandfather, the revenue authorities implemented the ownership certificate in the name of his father by name Vadla Narsaiah. After the death of his father, when the petitioner and his brother intended to cultivate the subject lands, the fourth respondent restrained and threatened them. In those circumstances, the petitioner filed an application on 19.02.2005 before the first respondent for restoration of the possession of the subject lands. The first respondent forwarded the

said representation to the third respondent vide letter dated 21.02.2005. After receipt of the said letter, the third respondent directed the Mandal Revenue Inspector, Rebbena-1, to handover the possession of the land to the holder of 38-E certificate with the help of the Mandal Surveyor under cover of a panchanama and Zimma Patrika. Even before issuing instructions by the first respondent to the third respondent, the fourth respondent had approached the first respondent and made a representation on 02.03.2005 stating that he had purchased the subject lands from original pattedar viz., G.Venkat Rao in the year 1967 and that they orally compromised with the father of the petitioner to share half of the land by each of the parties. In response to the letter issued by the first respondent, the third respondent submitted a report on 06.04.2005 requesting to issue necessary instructions to him to restore the possession of subject lands to the holder of 38-E certificate i.e., the father of the petitioner. In the month of November, 2002, the second respondent directed the third respondent to restore the possession of the subject lands to the father of the petitioner. Thereafter, the first respondent, instead of issuing pattedar passbooks and title deeds in favour of the petitioner, has passed the impugned order dated 06.03.2007, directing the third respondent to mutate the ownership of the subject lands in the name of the fourth respondent and to issue pattadar passbooks and title deeds in his favour.

3. Sri V.Ravi Kiran Rao, learned counsel for the petitioner, contended that the first respondent, without taking into

consideration the fact that the grandfather of the petitioner was the protected tenant and he was issued 38-E Certificate by the second respondent, holding that he is the deemed owner of the subject lands with effect from 01.01.1973, has passed the impugned order without conducting any enquiry. The first respondent, while passing the impugned order, did not take into consideration the proviso under Section 38-E(2) of the Tenancy Act, which was added by the Act 2 of 1979 with effect from 11.01.1979, and hence the said is without jurisdiction and is liable to be set aside. He placed reliance on the Full Bench judgment of this Court in **Sada Vs. Thaildar, Utnoor**¹.

4. Sri Pavan Reddy, learned Assistant Government Pleader for Revenue (Telangana), contended that upon the application of the fourth respondent, after hearing the petitioner, the impugned order has been passed by the first respondent in the light of the enquiry report of the third respondent and sought to dismiss the writ petition.

5. Despite service of notice by the Registry on 06.02.2008, the fourth respondent did not choose to appear either in person or through an Advocate.

6. It is necessary to refer to Section 38-E (2) of the Tenancy Act and it reads as under:

“Section 38-E: Ownership of lands held by protected tenants to stand transferred to them from a notified date:

¹ 1987(2) APLJ 397

(1) ...

(2) A certificate in the prescribed form declaring him to be owner shall be issued by the Tribunal after holding such enquiry as may be prescribed, to every such protected tenant and notice of such issue shall simultaneously be issued to the landholder. Such certificate shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the landholder and all other persons having any interest therein:

Provided that where the land, the ownership of which has been transferred to the protected tenant under sub-section (1), is in the occupation of a person other than the protected tenant or holder of the certificate issued under this sub-section, it shall be lawful for the Tahsildar to restore the possession of the said land to the protected tenant or holder of the certificate, after giving notice of eviction to the occupant thereof, in the prescribed manner.”

8. The impugned order shows that the first respondent proceeded solely on the proposition that a protected tenant can be given ownership certificate under Section 38-E of the Tenancy Act, only if he was in possession of the land in question and otherwise he cannot be given possession by the revenue authorities. The first respondent relied upon a Division Bench judgment of this Court given in W.A.Nos.19 and 20 of 1978 for relying upon the above proposition. But, as per the ratio subsequently laid down by the Full Bench of this Court in **Sada's** case (supra), a protected tenant can be granted ownership certificate even without possession. Apart from the said ratio, Section 38-E(2) of the Tenancy Act also says that where the land is in the occupation of a person other than the protected tenant or holder of 38-E certificate, it shall be lawful for the Tahsildar to restore the possession of the land to the protected tenant or holder of the certificate. In view of this, it can be said that the impugned order is illegal and is liable to be set aside.

9. Apart from the same, a reading of the impugned order, it is clear that in the subject, it is stated as declaration of title and mutation proceedings, but in the order, the first respondent dealt with issuance of a certificate under Section 38-E of the Tenancy Act. As per Section 5 of the ROR Act, the power of carrying out mutations vests with the Tahsildar. Section 5 of the ROR Act reads as under:

“5. Amendment and updating of Record of Rights:-

(1) On receipt of intimation of the fact of acquisition of any right referred to in Section 4, the Mandal Revenue Officer shall determine as to whether, and if so in what manner, the record of rights may be amended in consequence therefore and shall carryout the amendment in the record of rights in accordance with such determination:

Provided that no order refusing to make an amendment in accordance with the intimation shall be passed unless the person making such intimation has been given an opportunity of making his representation in that behalf.

(2) Where the Mandal Revenue Officer has reason to believe that an acquisition of any right of a description to which Section 4 applies has taken place and of which an intimation has not been made to him under that Section and where he considers that an amendment has to be effected in the record of rights, the Mandal Revenue Officer shall carry out the said amendment in the record of rights.

(3) The Mandal Revenue Officer shall, before carrying out any amendment in the record of rights under sub-section (1) or sub-section (2) issue a notice in writing to all persons whose names are entered in the record of rights and who are interested in or affected by the amendment and to any other persons whom he has reason to believe to be interested therein or affected thereby to show cause within the period specified therein as to why the amendment should not be carried out. A copy of the amendment and the notice aforesaid shall also be published in such manner as may be prescribed. The Mandal Revenue Officer shall consider every objection made in that behalf and after making such enquiry as may be prescribed pass such order in relation thereto as he deems fit.

(4) Every order passed under this section shall be communicated the person concerned.

(5) Against every order of the Mandal Revenue officer either making an amendment in the record of rights or refusing to make such an amendment, an appeal shall lie to the Revenue Divisional Officer or such authority as may be prescribed, within

a period of sixty days from the date of communication of the said order and the decision of the appellate authority thereon shall subject to the provisions of Section 9, be final.

(6) The Mandal Revenue Officer shall have the power to correct clerical errors, if any, in the Pass Books.”

10. Insofar as the issue under the Tenancy Act, the power vests with the Joint Collector and Under Section 5 of the ROR Act, the power vests with the Tahsildar. Clubbing both the issues together and passing orders by the first respondent in the present case is the one without jurisdiction and is *ultra vires*. There is no power vested with the first respondent to act under Section 5 of the ROR Act and under Section 38-E of the Tenancy Act together. The impugned order lacks jurisdiction.

11. For the aforesaid reasons, the writ petition is accordingly allowed, setting aside the order of the first respondent in Proc.No.E/1785/2001, dated 06.03.2007. No costs. Miscellaneous petitions pending, if any, shall stand closed.



T.AMARNATH GOUD, J

Date: 30-08-2018
TJMR