

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.6274 OF 2016

ORDER:

This revision petition is preferred under Section 91 of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short "the Act") challenging the order dated 27.09.2016 passed in Case No.F2/4966/2013 (Appeal No.F2/8256/1997) by the Joint Collector-II, Ranga Reddy District.

The petitioner herein was the respondent No.2 before the Joint Collector and the respondent No.1 herein was the appellant before the Joint Collector and they will be referred as petitioner and respondent as arrayed in this revision.

Respondent No.1 herein originally preferred an appeal under Section 90 of the Act vide No.F2/8256/1997 before the Appellate Authority against the orders of Additional Revenue Divisional Officer, Land reforms dated 15.05.1975 in file No.LRW/61/75 conferring Section 38E ownership certificate on the respondent No.2 herein in respect of the land to an extent of Ac.3.23 gts in Sy.No.124 of Tupra Village, Shamshabad Mandal, Ranga Reddy District, in the year 1997. The said appeal was filed under Section 90 of the Act within limitation from the date of knowledge i.e. 20.09.1997 explaining the source of knowledge about the orders passed therein. Section 38E ownership certificate was erroneously granted to the respondent No.2 herein, who is no more protected tenant, as such the certificate was contrary to the provisions of the Act. The said appeal was taken on file and ordered notice to the respondent No.2 herein, who was the sole respondent as on the date of presentation of the appeal, and on appearance no counter

was filed, but the appeal was dismissed and aggrieved by the dismissal of the appeal by order dated 24.10.2005, the appellants carried the matter in revision C.R.P.No.6127 of 2005 before this Court and this Court impleaded the petitioner herein in the above revision who intervened on his own and remanded the matter to the appellate authority setting aside the order dated 24.10.2005 in file No.F2/8256/97.

The totally land measuring Ac.7.07 gts situated at Pedda Tupra Village, Shamshabad Mandal, Ranga Reddy District and one Abdul Khader was pattedar/landlord of the said survey numbers besides other lands in the same village. The following names were recorded as protected tenants viz. Azam Ali for Ac.3.23 gts, Chiakali Laxmaiah for Ac.1.26 gts, Baddam Saina for Ac.0.16 gts, and Begari Jangaiah (father of Chennaiah) for Ac.0.36 gts. While so, on the application dated 21.03.1996 by Narsamma, w/o Begari Jangaiah as kartha of minor children and so also other protected tenant in respect of Sy.Nos.124 and 125, the then Tahsildar, Shamshabad in file No.1784/1966 has been taken up the applications of surrender under Section 19 of the Act and surrender was recorded and Protected tenants name including the name of Begari Jangaiah was rounded off from the Final Protected Tenancy Register as against Sy.No.124 by endorsement dated 23.04.1966 as evidenced from certified extract of Protected Tenancy Register. The said surrender and also the rounding of the Protected Tenants name was confirmed by the Tahsildar, Shamshabad Mandal through memo's vide No.CC/644/1995, dated 10.11.2003.

Pursuance to the said surrender of Protected Tenancy Rights, the then Tahsildar has issued an order dated 29.04.1996 in file No.A4/9864/66 under Sections 47 and 48 of the Act to the Pattedar Mohd.Abdul Khader in respect of Sy.No.124 and 125 permitting alienation by the said Pattedar in favour of Bengal Stores Limited (vendor of the respondent No.1). On the basis of said permission the original owner/pattedar Abdul Khader sold the total extent of lands in Sy.No.124 and 125 under registered sale deed dated 05.05.1966 vide Doc.No.428/1966 to Bengal Stores declaring that the said land is free from Protected Tenancy Rights. Subsequently, the said Bengal Stores Limited was amalgamated with Indian Shipping Company and the said Shipping company under registered sale deed dated 02.05.1995 vide Doc.No.6277/1995 sold the land to an extent of Ac.5.01 gts., out of Ac.7.07 gts in Sy.No.124 to the respondent No.1 herein. Thus, the respondent No.1 herein acquired title and possession of the subject land and became owner by tracing out title from Pattedar, Abdul Khader and the land in survey number is free from protected tenancy rights, but the Tenancy Tribunal (RDO) passed order and issued Section 38E certificate in favour of Chennaiah (respondent No.2 herein) alleged son of Begari Jangaiah.

Aggrieved by the said order, an appeal was preferred before the Joint Collector.

Joint Collector-II, Ranga Reddy District, passed the order, which is the subject matter of challenge in this revision.

The Joint Collector passed the order consisting of two paragraphs without discussing anything and the order is extracted hereunder:

“On examining the material placed on record as well as the Protected Tenancy Register of Tupra (Vg), Shamshabad (M), it appears that only Ac.0-36 gts in Sy.No.124 is recorded in the name of the Protected Tenant Sh Begari Jangaiah. The Additional RDO, Hyderabad West in his order dt.15.05.1975 in file No.LRW/61/75 does not give any justification for why he issued a 38-E certificate for the extent of Ac.3.23 gts. There is an endorsement in the Protected Tenancy Register that the land had been surrendered by the PTs. But as the respondent herein rightly says, it is unclear whether the surrender is via Tahsildar, Shamshabad file No.1784/1966 or 6784/1986. This issue can be only examined on verification of the concerned file.

In view of the observations made herein the Additional Revenue Divisional Officer, Hyderabad West order vide No.LRW/61/75 dated 15.05.1975 is set aside. The respondents herein may approach the RDO, Rajendranagar afresh for issual of a 38-E certificate. As per Revenue Records. The Revenue Divisional Authority, Rajendranagar shall examine the records in his office and pass orders as per law.

The appeal is accordingly disposed off.”

The above order passed by the Joint Collector is challenged in this revision treating the same as order of remand to the RDO raising several contentions.

The main objection raised by Sri B.Venkata Rama Rao, learned counsel for the respondents is that when the order of the Joint Collector is remand of the matter to the Primary Authority i.e. R.D.O, no revision lies against such order and in support of his contentions he placed reliance on the judgment of Apex Court rendered in ***“Mammu v. Hari Mohan¹”***. On the strength of the

¹ AIR 2000 SC 650

principles laid down in the said judgment, he requested to dismiss the revision on the preliminary objection about the maintainability of the revision against the order of remand of the matter to the primary authority i.e. R.D.O.

Whereas Smt.Neeraja Reddy on behalf of Bathula Raj Kiran, learned counsel for the petitioner contended that the order is not a remand, it is a final decision of the Joint Collector since the petitioner (respondent No.1 before the Joint Collector) was permitted to approach the R.D.O. afresh, when such direction was given, it cannot be treated as remand order, therefore, the revision is maintainable against the final order and in support of her contentions, she relied on the judgments of this Court rendered “**Kurva Mallamma v. Kupireddy Sasthri**”² and “**Yerraboth Sathiah v. Edla Chaliah**”³

On considering the rival submissions and perusing the material available on record, the point that arises for consideration is as follows:

“Whether the revision is maintainable under Section 91 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 against the impugned order dated 27.09.2016 passed in Case No.F2/4966/2013 (Appeal No.F2/8256/1997) by the Joint Collector-II, Ranga Reddy District.?”

P O I N T:

As seen from the order impugned in this revision passed by the Joint Collector, the Joint Collector set aside the order passed by the Primary Authority i.e. Additional Revenue Divisional Officer,

² 2001 (1) ALD 298

³ 1960 (1) ALT 191 (S.B.)

Hyderabad West vide file No.LRW/61/75 dated.15.05.1975, but a peculiar direction was given to the respondents therein to approach the RDO, Rajendranagar afresh for issual of a 38-E certificate.

The impugned order is neither final order nor an order remanding the matter to the Revenue Divisional Officer, Rajendranagar. When the order passed by the Additional Revenue Divisional Officer, Hyderabad West vide File No.LRW/61/75 dated 15.05.1975 is set aside, it is a final order. But the 2nd part of the order indicates that Revenue Divisional Officer has to decide the entitlement of the petitioner herein, on fresh application for issuance of certificate under Section 38-E of the Act. Therefore, the order of the Joint Collector is totally ambiguous and the order is not conveying the intention of the Joint Collector as to whether the intention of the Joint Collector is to remand the matter to the Revenue Divisional Officer or decided the matter finally.

Learned counsel for the petitioner treated the order as remand in various paragraphs of revision, more particularly in ground Nos.6 and 7 the order as treated as order of remand to the Revenue Divisional Officer, but the counsel Smt.Niraja Reddy, contended that it is a mistake in the reference in various grounds raised in the revision and the same cannot be taken as an admission that the order under challenge is remand of the matter to the Revenue Divisional Officer for fresh disposal.

No doubt, as per the understanding of the counsel, who filed the revision it is only remand order, understanding of the counsel for the petitioner while filing the revision if taken, it is only order of remand, against which no revision is maintainable. But it is

difficult to accept that it is an order of remand to the Revenue Divisional Officer, Rajendra Nagar. However, when such ambiguous order is passed, the order cannot be interpreted by the Courts to find out the intention of the author of the judgment or order.

It is settled law that the judgment cannot be interpreted but the Statute can be interpreted by the Courts. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of 'Interpretation of Statutes'. Vis-à-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof. The obvious basis for the principles against interpretation of statutes depends upon the nature of the statute, but such interpretation cannot be attached to the judgment or order passed by the authority under any enactment, by the superior authorities under the statute. Therefore, the judgment of the lower Court or authority under statute cannot be interpreted by the superior authority or Court and it shall be considered on its plain language used in the judgment. If any interpretation is given by the Courts to the

Judgment of lower authority or Court, it would lead to violence to the intention of author of judgment.

The order under challenge is not a final order and not an order of remand and the Joint Collector concerned was unable to convey his/her intention finally. It appears from the record that the order is remanding the matter to the Primary authority, but inartistic drafting of the order created such problem. As per the understanding of the counsel for the revision petitioner, it is an order of remand to the primary authority having filed a revision, but raised a different contention that it is a final order, which is impermissible under law and when the counsel accepted that the order is remanded, he cannot contend otherwise in view of the principles of estoppel, more particularly the counsel for the respondent objected about the maintainability of the revision under Section 91 of the Act.

If the order is treated as remand, the revision is not maintainable in view of the law declared by this Court in **“Yerraboth Sathiah v. Edla Chaliah”** (referred supra).

In **“Kurva Mallamma v. Kupireddy Sasthi”**⁴ and **“Yerraboth Sathiah v. Edla Chaliah”** (referred supra) an identical question came up before this Court and this Court came to the conclusion that the expression "final order" should on etymological construction fall to be construed as an order determining the rights of the parties to the lis. This is the view taken in the earlier decision of this Court (supra). There appears no warrant on settled interpretive principles to depart from this view. Without dilating upon this aspect it does not appear to this

⁴ 2001 (1) ALD 298

Court that if an order of remand is passed arbitrarily and without basis by the appellant authority under the Act, the aggrieved person would be without remedy at law, a remedy de hors Section 91 of the Act. But the question herein is one of jurisdiction of this Court in revision, having regard to the contours of the language of Section 91 of the Act and concluded that no revision under Section 91 is available against an order of the appellate authority remanding the matter to the primary authority.

An identical question came up before the Supreme Court in “**Mammu v. Hari Mohan**” (referred supra) under the provisions of Kerala Land Reforms Act, the Apex Court is of the view that an order which does not dispose of the appeal is not a ‘final order’. An order of remand in which the matter is remanded to the Land Board for disposal in accordance with law cannot be said to be an interlocutory order for the simple reason that the appeal filed before the Land Tribunal stands disposed of by such order.

In the present case, the order is not directly remanding the matter to the Revenue Divisional Officer by the Joint Collector but granted permission to the respondents therein to approach the Revenue Divisional Officer, Rajendranagar afresh while setting aside the order passed by the Additional Revenue Divisional Officer, Hyderabad West Order vide file No.LRW/61/75 dated 15.05.1975. If the first limb of the order is accepted, it is final order, but the 2nd part indicates that the order is not final. Therefore, the order is neither final nor direction to the primary authority. In such an event, the cryptic order cannot be sustained under law.

The Joint Collector concerned for the reasons best known to her, extracted the written arguments of the appellant submitted through the counsel, brief contents of the counter filed by respondent Nos.1 and 2 through their counsels, in various paragraphs running into 10 ½ pages, but the order is only two paragraphs consisting of few lines, which I extracted in the earlier paragraph.

The impugned order passed by the Joint Collector is a cryptic order and even without following the minimum principles for drafting the order.

Time and again, the Apex Court and this Court issued certain guidelines to be followed for drafting judgments and highlighted the contents of an order or judgment.

What an order shall contain normally is not specified anywhere but the order must be reasoned one since the judgment or order in its final shape usually contains in addition to formal parts:- (i) A preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and the place at which, the writ or other originating process was served, the parties appearing any consent, waivers, undertakings or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order, is based and (ii) A substantive or mandatory part, containing the order made by the Court" as has been said in Halsbury's Laws of England (4th Edition, Volume 26 P. 260). Thus, in view of the requirements of an order or judgment referred above, an order pronounced on the bench shall contain the reasoning since the

judge speaks with authority by his judgment. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness and clarity are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to these cardinal qualities of a good judgment, there are the attributes of style, elegance and happy phrasing which are its embellishments. In the words of Former Chief Justice of the Supreme Court Sabyasachi Mukharji, the requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment. Equity, justice and good conscience are the hallmarks of judging. One who seeks to rely only on principles of law, and looks only for the decided cases to support the reasons to be given in a case or acts with bias or emotions, loses rationality in deciding the cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him. Justice M.M. Corbett, Former Chief Justice of the Supreme Court of South Africa, recommended a basic structural form for judgment writing, which is as follows:

"(i) Introduction section;

(ii) Setting out of the facts;

(iii) The law and the issues;

(iv) Applying the law to the facts;

(v) Determining the relief; including costs; and

(vi) Finally, the order of the Court."

Keeping in view various principles and observations including the definition of order and judgment, the Apex Court laid down certain guidelines for writing judgments and orders in Joint Commissioner of Income Tax, Surat, v. Saheli Leasing and Industries Limited (Civil Appeal No. 4278 of 2010) in para No. 7 of the judgment and they are extracted hereunder:

"7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-

(a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.

(b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion."

(c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a

period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

(g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."

Therefore, a judgment or an order shall contain the above seven minimum requirements i.e., (a) to (g).

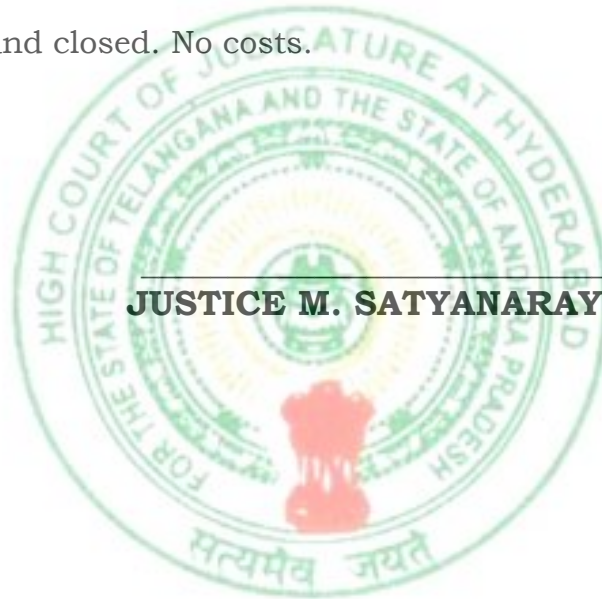
Ignoring the principles laid down by the Apex Court for drafting an order or judgment, the Joint Collector passed the impugned order without conveying any meaning or without indicating the intention of the Joint Collector. Such order is totally unsustainable.

It appears from the record, the parties are fighting for their rights in immovable property i.e. agricultural lands since 1966 and the matter is being shuttled from one authority to the other on account of remand by the authorities concerned. If the matter is being remanded from time to time, it would cause delay in disposal of the matter keeping the parties totally in dark about their rights in the land, such uncertainty cannot be resolved by this Court in view of the power available under Section 91 of the Act. Unless the rights are settled by way of order, it is difficult for them to deal with the property. Remanding the matter from time to time passing such illegal or irregular orders would loose confidence of litigant public on the authorities. Therefore, to maintain public trust, the impugned order is hereby set aside while remanding the matter to the Joint Collector concerned with a direction to pass a reasoned order afresh in accordance with law, without remanding the matter to the primary authority, based on the material available being an appellate authority.

In the result, the civil revision petition is allowed, setting aside the order dated 27.09.2016 passed in Case No.F2/4966/2013 (Appeal No.F2/8256/1997) by the Joint Collector-II, Ranga Reddy District while remanding the matter to the Joint Collector concerned with a direction to consider the contentions of the parties herein and pass appropriate reasoned order afresh in accordance with law, within six (6) months from the date of receipt of a copy of this order, without again remanding the matter to the Primary or any authority. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

23.02.2018
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JUSTICE M. SATYANARAYANA MURTHY