

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

CIVIL REVISION PETITION Nos.191 & 293 of 2014

CRP.No.191 of 2014

Between:

Kontham Anji Reddy (Died) per L.R. Kontham Narsi Reddy

.....Petitioners

and

Nimmagudem Laxmaiah (died) per LRs and 4 others

.....Respondents

CRP.No.293 of 2014

Between:

Kandukoori Pratap Reddy and 6 others

.....Petitioners

and

Nimmagudem Laxmaiah (died) per LRs and 5 others

.....Respondents

Date of Judgment pronounced on : 25-04-2018

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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> HEAD NOTE:

! Counsel for the petitioners : Sri K. Mahipathi Rao
Sri N. Harinath

^ Counsel for the respondents : Sri N. Krishna Sumanth

? Cases referred

1. 1998 (9) SCC 183
2. 1959 ALT 924
3. LAWS(APH)-1962-9-6
4. AIR 1988 AP 77
5. (1979) I Andh WR (HC) 23
6. (1961) 1 Andh WR 413
7. 1959 Andh LT 650
8. (1971) 2 APLJ (HC) 266
9. 2007 (1) ALD 101 (SC)
10. 1995 1 SCC 232
11. 2008 16 SCC 299
12. 1995 (3) SCC 327
13. 2003 (7) SCC 667
14. 2016 (6) ALD 7(SC)

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**CIVIL REVISION PETITION Nos.191 & 293 of 2014****COMMON ORDER:**

1(a). The revision petitioner in CRP.No.191 of 2014 by name Kontham Anji Reddy since died is represented by his LR-son Kontham Narsi Reddy, maintained under Section 91 of AP (TA) Tenancy and Agricultural Lands Act (for short 'the Act') impugning the order of dismissal passed by the Joint Collector-I, Ranga Reddy District, in case No.F2/3952/2010 dated 26.12.2013, confirming the order passed by the Tahsildar, Maheswaram in file No.B/625/2009 dated 08.02.2010. The respondents to the revision are one N.Laxmaiah S/o Venkulu since died represented by LRs i.e., N.Srinivas Goud, N.Srihari Goud and N.Sri Raghu Goud, three sons of said Laxmaiah and N.Eswaraiah S/o Venkulu (brother of above Laxmaiah).

1(b). CRP.No.293 of 2014 is filed under Section 91 of the Act by K. Pratap Reddy S/o Laxma Reddy, K.Prabhakar Reddy S/o Gopal Reddy, K.Chandra Reddy S/o Laxma Reddy, K.Raghuma Reddy S/o Laxma Reddy, K.Krishna Reddy S/o Laxma Reddy, K.Sudhakar Reddy S/o Laxma Reddy, K.Venkat Reddy S/o Kantu Lakshma Reddy, against the order of the Joint Collector-I, Ranga Reddy District in case No.F2/945/2010 dated 26.12.2013 allowing the same in grant of the relief beyond what was granted by the Tahsildar in file No.B/625/2009 dated 08.02.2010 supra. The respondents to the revision are selfsame revision respondents in CRP.No.191 of 2014 supra besides one N.Laxmamma W/o. Laxmaiah.

2(a). The contentions in the grounds of revision in CRP.No.191 of 2014 in nutshell are that N.Laxmaiah and N.Eswaraiah, sons of Venkulu filed application for grant of succession of tenancy rights of their father Venkulu S/o Yellaiah under Section 40 of the Act, in respect of lands in survey Nos.42, 55 to 66 of Sreenagar Village, Maheshwaram Mandal before the Tahsildar claiming that Venkulu was the protected tenant of said lands and he died on 23.09.1980 and they are entitled to succession of the protected tenancy rights being his two sons. On receipt of the notice from Tahsildar, K.Anji Reddy and his son Narsi Reddy filed counter opposing the same saying Venkulu was never the protected tenant of said lands and Section 40 of the Act does not contemplate any right of succession to them. The Tahsildar recognized said N.Laxmaiah and Eswaraiah as protected tenants by granting them succession of protected tenant rights of their father N.Venkulu in respect of said lands in survey Nos.42, 57, 62, 63, 64, by order dated 08.02.2010 in file No.B/625/2009. Aggrieved by it, the revision petitioners herein filed case No.F2/3952/2010 before the Joint Collector-I, Ranga Reddy District, challenging the order of the Tahsildar, but the Joint Collector dismissed the appeal which made them to file this revision.

2(b). The contentions in the grounds of revision therefrom are that the impugned orders are contrary to law, weight of evidence, the Tribunal ought to have seen that Section 40 of the Act does not give any power or jurisdiction to the Tahsildar to issue succession of tenancy to legal heirs, but for to recognize the legal heirs of the deceased protected tenant, provided the original

tenant was holding the land at the time of his death and beyond that cannot declare succession and the only enquiry contemplated in such case is under Section 32, 38 & 38-E of the Act by the concerned authority. Independent proceedings under Section 40 of the Act for succession thereby cannot be initiated and even same was the plea that was not considered before the Tribunals. The Tribunals below ought to have seen that as per Section 40 of the Act unless and until protected tenant was holding the land at the time of his death, his legal heirs cannot inherit tenancy rights and in the case on hand, the so called protected tenant Venkulu was not holding the land at the time of his death and his sons cannot be declared as successors of tenancy rights. Further once the original tenancy register is not available in the office for verification, the Tribunals erred in holding that late Venkulu was the protected tenant though the very office of Tahsildar by **memo** dated 05.11.2007 in file No.CC/1410/2007 and letter No.C/Spl/2008 dated 08.01.2008 specifically stated that there are no protected tenants in respect of lands in dispute, it is unknown how the Xerox copy of alleged protected tenant register would be obtained, which shows it is a manipulated one. The tenancy register in fact contains two parts one is for protected tenant and another is for ordinary tenant and it is not known which part of the tenancy register is relied upon and on what basis when original tenancy register is not available. The Tribunals ought to have seen that the so called tenant is not in possession since more than 50 years, the pahanies for the years 1952-53 filed by the respondents-so called tenants are obviously manipulated with different handwriting and the sesal

pahani is also equally manipulated and khasra pahani which is even relevant, name of alleged tenant not found to be in possession therein, which are all evident to say the so called tenant never in possession for all these years and the respondents in their petition under Section 40 of the Act before the Tahsildar did not say that they have been in possession and even did not say when they were dispossessed if any. The Tribunals below should have seen that the revision petitioners Anji Reddy and Narsi Reddy among others purchased the properties on the basis of memo issued by Tahsildar to the effect that there were no protected tenants and the purchasers acquired rights in said lands cannot be deprived of their rights at the belated application of the so called legal heirs of the protected tenant, for not filed within reasonable time and for not came to the Court for more than 50 years after dispossession and for more than 30 years after death of said Venkulu. The Tribunals below by cryptic orders granted certification and dismissed the appeal against it without considering various contentions raised including the proposals placed reliance. Section 38-D of the Act has no application to the facts for no evidence that late Venkulu was protected tenant of the lands and that the alleged tenant died in 1980 and not in possession since before his death and consequently for not holding the lands at the time of his death to invoke Section 40 of the Act. The Tribunals below went wrong in saying that sale of lands by original pattedar other than the protected tenants is bad under Section 38D of the Act for not even proved of Venkulu was protected tenant much less in possession by the time of his death and the sales in favour of

Badar Bin Mubarak and others was effected in 1987 could not have been questioned in the application filed under Section 40 of the Act in the year 2009 for said Laxmaiah and Eswaraiah sons of Venkulu never in possession and Venkulu before his death not even in possession and original PT register not traced and no finding given on Xerox copy of alleged tenancy register to rely or to admit, that too even not seriously in challenge about the admissibility, and the findings that the alleged tenant deemed to be in possession is contrary to the pleadings for no such presumption or fiction to draw and the appellate Tribunal has erred in deciding the appeal impugned in the revision, based on some other appeal regard to which the revision petitioners are not parties and thereby the same is liable to be set aside.

2(c). So far as CRP.No.293 of 2014 concerned, the contentions in the grounds of revision are that the impugned order of the Joint Collector is contrary to law and fact and unsustainable. The Joint Collector did not consider the fact that the revision petitioners purchased the total land in survey Nos.54, 56, 58, 61, 65 & 66 vide registered sale deed bearing No.108/1994 dated 17.01.1994 and after purchase their names were mutated in revenue records and Tahsildar, Maheshwaram after due enquiry issued Record of Rights proceeding No.D/281/1994 dated 27.01.1994 and were issued revenue title deeds and pattadar passbooks consequently showing the revision petitioners are in possession and enjoyment by personal cultivation from 1994 till 2007, when LAO and Special Deputy Collector for Outer Ring Road Unit-I, Hyderabad issued notification for acquisition of Ac.7-16 gts in survey Nos.56, 58 to

61, 65 & 66, vide Gazette ORR No.27 dated 29.03.2007. The Joint Collector erred in not considering the petitioners were paid compensation, as per their share of land acquired. On that point of time, the revision respondents N.Laxmaiah and Eswaraiah sons of Venkulu died by LRs filed objections before LAO and Special Deputy Collector on came to know of the acquisition and the objection dated 06.07.2007 is in claiming that they are protected tenants and compensation being paid to them. The LAO and Special Deputy Collector, after due enquiry, overruled their objections and rejected their claims in respect of the lands. Having been aggrieved by the order of the LAO & Special Deputy Collector, said Laxmaiah & Eswaraiah and LRs filed WP.No.14568 of 2008 which is pending and the Court is declined to pass any interim orders therein. The information obtained by the revision petitioners from the Tahsildar Office, Maheshwaram Mandal vide memo dated 08.01.2008 and letter No.C/Special/2008 states that the lands in survey Nos.56, 58 to 61, 65 & 66 were not found in the PT register of Sreenagar Village. The order of the Joint Collector shows undue importance is given to Photostat of alleged certificate copy of PT register said to have been issued on 06.04.1983 as a basis. The Collector further presumes for other survey numbers might have been covered in PT register in arriving with a perverse finding, leave about there is inordinate delay of 4 decades with the claim of tenancy rights. The Joint Collector went wrong in relying on Photostat copy, a fabricated register and Photostat copy of pahani fabricated in ordering grant of succession under Section 40 of the Act dated 26.12.2013 in

case No.F2/945/2010 which made them to file CRP.No.293 of 2014.

3(a). Heard and perused the material on record.

3(b). The learned counsel for the revision petitioners reiterated the contentions.

3(c). Whereas the counsel for the respondents supported the impugned orders and sought for dismissal of the revisions.

3(d). In the course of elaborate hearing of both sides including with reference to the provisions, some propositions are placed reliance.

4. Coming to the factual matrix, the lands in survey Nos.42, 56 to 66, 182, 183 & 184 of Sreenagar Village, Maheshwaram Mandal, Ranga Reddy District stand in the name of one A.Venkat Narayana Rao S/o Purushotam Rao, the original pattader. It is the claim by N.Laxmaiah and Eswaraiah, the sons of Venkulu since died on 23.09.1980, that their late father Venkulu was the protected tenant of these lands in an area of grant of Ac.17.16 gts or so. Said Laxmaiah & Eswariah sons of Venkulu filed O.S.No.151 of 2008 on the file of JCJ, Ibrahimpatnam, wherein they were shown as legal heirs of late Venkulu S/o Yellaiah. Consequently they filed the application under Section 40 of the Act in file No.B/625/2009 against the revision petitioners in both the revisions, except K.Venkat Reddy in CRP.No.293 of 2014, stating that said lands were acquired for purpose of formation of Outer Ring Road and they put forth their claims before authorities for payment of compensation. The certified copies of the so called final tenancy register of Sreenagar Village of the year 1950 for survey Nos.42, 56 to 66 and 183 stand in the name of

A.Venkat Narayana Rao as original pattedar and N.Venkulu as protected tenant. The total area was shown as Ac.17.16 gts as per the amended petition before the Tahsildar with item wise extents. The entries in khasra pahani 1954-55 have not reflected N.Venkulu in the occupation column. The Deputy Tahsildar earlier issued memo No.C/Spl/2008 dated 08.01.2008 to K.Chandra Reddy etc., stating that there are no protected tenants for survey Nos.56, 58, 60, 61, 65 & 66 of Sreenagar Village. One of the contentions of the revision petitioners as respondents before the Tahsildar for the notices, besides above is that the so called N.Laxmaiah and Eswaraiah and their father Venkulu to claim as protected tenant never in possession for more than 40 years to file any petition under Section 40 of the Act. K.Narsi Reddy stated about the land acquisition matter is referred to civil Court under Section 30 of the Act from dispute as to title that is pending. N.Venkulu admittedly died on 23.09.1980. Said Laxmaiah and Eswaraiah sons of Venkulu claims succession only in respect of survey Nos.42, 56 to 66, 182 to 184 of Sreenagar Village. What the endorsement of the Deputy Tahsildar dated 08.01.2008 to verify the genuineness or otherwise of the extract of the tenancy register of 1950 issued on 06.04.1983 and the memo issued by their office dated 05.11.2007 and 08.01.2008 is that original tenancy register is not available in the office and thereby could not be verified pursuant to the notice issued by LAO & Special Deputy Collector under Section 12(2) of the LA Act dated 29.07.2008 in referring the matter under Section 30 of the Act for the lands in survey Nos.42, 57, 62 to 64 covered by land acquisition for ORR project. The Tahsildar observed that as per

Khasra pahani 1954-55 name of the pattader A.Venkata Narayana Rao was recorded in the occupation column. The respective respondents K.Narsi Reddy and K.Pratap Reddy etc., opposed the Section 40 application of N.Laxmaiah & Eswaraiah, sons of Venkulu saying Venkulu orally surrendered the tenancy to the pattader prior to the amendment to Section 19 of the Act and right from 1953-54 and 1954-55 the original pattedar Venkata Narayana Rao was in physical possession and enjoyment. In CRP.No.247 of 1955 dated 13.09.1958 the High Court observed that prior to amendment to Section 19 of the Act 1950, the surrender made without writing is invalid. The Supreme Court in **Ponnala Narsing Rao Vs. Nallolla Pantaiah And Others**¹ held that application should be moved within a reasonable time otherwise other side may adversely be affected from the changed possession in occupation of the properties and investment of huge amounts in improving the same. Thus, the application filed under Section 40 of the Act about 5 decades changes the possession and land acquisition notice issued for payment of compensation and N.Laxmaiah and Eswaraiah sons of Venkulu chosen with ill-will to make a claim for compensation amount in resorting to file application under Section 40 of the Act. The pattedar Venkata Narayana Rao sold lands in an extent of Ac.7.3 gts of survey Nos.42, 57, 58, 62 to 64 in favour of Bader Bin Mubarak & Abdulla Bin Bader under registered sale deed No.2299 of 1987 dated 04.01.1987 and their names were recorded as pattaders as can be seen from the pahanies for 1989-92 and there was exchange deed between Bader Bin Mubarak

¹ 1998 (9) SCC 183

and Abdulla Bin Badar with Anji Reddy and Narsi Reddy for the extent of Ac.7.10 gts of survey Nos.42, 57, 58, 62 to 64 and mutation changed in the name of K.Anji Reddy and Narsi Reddy for the said area under proceedings dated 18.01.1994 as per exchange deed as pattader and pattader passbooks and title deeds were issued without verifying the original tenancy register if any on the veracity of the so called certified copy of the PT register issued on 06.04.1983 that was filed by said Laxmaiah and Eswaraiah, sons of Venkulu and the memo issued by the Deputy Tahsildar dated 05.11.2007 & 08.01.2008 of the survey numbers mentioned in the certified copy dated 06.04.1983 are not available in the PT register, but for only S.No.42 (Ac.0.11 gts), 57(Ac.1.34 gts), 62 (Ac.1.16 gts), 63 (Ac.1.26 gts) and 64 (Ac.1.20 gts). It is therefrom observed that N.Laxmaiah & Eswaraiah, sons of Venkulu are entitled in respect of said extents in said survey numbers only for grant of succession of PT rights and not for entire lands claimed and it is ordered to make necessary endorsements in PT register to that effect, in saying so far as other lands claimed, the available pages of PT register does not disclose Venkulu was protected tenant and in the absence of original record copies filed, cannot be relied upon.

5. Coming to the two impugned appeal orders of the Joint Collector respectively dated 26.12.2013 in case Nos.F2/945/2010 & F2/3952/2010. F2/945/2010 was filed by N.Laxmaiah since died and Eswaraiah sons of Venkulu by joining LRs of Laxmaiah by names-Laxmamma, Srinivas Goud, Srihari Goud & Sri Raghu Goud, wife and 3 sons; against the revision petitioners in CRP.No.293 of 2014 by names K.Pratap Reddy etc., and

F2/3952/2010 filed by K.Anji Reddy and Narsi Reddy against said Laxmaiah & Eswaraiah etc. So far as the contention of N.Laxmaiah and Eswaraiah etc., in the appeal F2/945/2010 is for not granting relief under Section 40 of the Act other than for Ac.7.03 gts though claimed for survey Nos.42, 56 to 66 etc., of about Ac.17.16 gts. The Joint Collector in disposal of the 2 appeals independently from the rival contentions in the respective orders observed that the Tahsildar, Maheshwaram, after conducting enquiry passed the orders dated 08.02.2010 supra granting succession only in respect of the above referred extents and rejected the claim for rest of the lands based on the original PT register entries disclose to that extent and not for other lands. Thereby in the absence of entries in the original register for other lands, based on the copies it cannot be granted. It is observed by the Joint Collector that khasra pahani 1954-55, sesal pahani 1955-58 and also Photostat copy of the original PT register shows name of N.Venkulu. Tahsildar's impugned order is thereby not justified in rejecting the claim in respect of other lands in simply saying available pages of original PT register did not disclose name of PT over other lands. When the very original PT register not available in a complete shape as observed by Tahsildar and for some pages relating to some entries even not available for some pages not relating to might have torn or removed to adversely effect the interest of protected tenants from Xerox copy of the CC of PT register, khasra pahani and sesal pahani shows the same and when original record is available with the Tahsildar speaks to verify in relation thereto, the appeal is to be allowed. Thereby granting succession under Section 40 of the Act for the

entire land as claimed and by saying the other appeal for part of the lands by impugning the same is liable to be dismissed. While so, dismissing with observation of even Venkata Narayana Rao original pattader sold patta lands of Ac.7.03 gts in survey Nos.42, 57, 58, 62 to 64 in favour of Badar Bin Mubarak and Abdulla Bin Badar under registered sale deed No.2299 dated 04.01.1987 and put them in possession and their names entered in revenue records and subsequently there were exchange of lands covered by exchange deed No.13380 dated 18.10.1993 and even Tahsildar, Maheshwaram, passed mutation orders in ROR dated 18.01.1994 and of which Ac.4.18 gts is acquired by the Government for Outer Ring Road and the matter referred to civil Court under Section 30 of Land Acquisition Act. Once Section 38-D of the Act provides that the land holder shall give notice of intention to sell to protected tenant and for his intimating in writing of his willingness after receipt of such notice and if he does not exercise the right of purchase option in response to the notice, landholder can sell by forfeiting the right of purchase of the protected tenant. Here there is no proof filed about any option given to the protected tenant or his LRs. Once the right of protected tenants are heritable, also speaks by Section 40 of the Act, the legal heirs are entitled to hold the tenancy in same terms and conditions on which the protected tenant was holding till his death and once the tenancy is not extinguished under the valid proceedings under the Act, the protected tenant is deemed to have been holding the land. It is said orders now under impugnement in both the revisions.

6. The Act 21/1950, Section 2(r) speaks protected tenant means a person who is deemed to be a protected tenant under the provisions of this Act after amended Act 15/1961. Section 5 of the Act in chapter III deals with tenant, amended by Act No.3/1954 in respect of persons deemed to be tenant reads as follows:

“Section 5 - Persons deemed to be tenants: A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the landholder and if such person is not—

(a) a member of the landholder's family, or

[(b) a servant on wages payable in cash or kind, but not in crop share or a hired labourer cultivating the land under the personal supervision of the landholder or any member of the landholder's family, or]

(c) a mortgagee in possession;

Provided that if upon an application made by the landholder within one year from the commencement of this Act to the Tahsildar within whose jurisdiction the land is situate—

(a) the Tahsildar declares that such person is not a tenant and his decision is not reversed on appeal or revision, or

(b) the Tahsildar refuses to make such declaration but his decision is reversed on appeal or revision.

such person, shall not be a tenant:

[Provided further that a sub-tenant cultivating any land belonging to another person on the day on which the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Second Amendment) Act, 1951, came into force shall, notwithstanding the fact that the creation of the sub-tenancy might have been prohibited by any law for the time being in force, be deemed to be lawfully cultivating the land as a tenant for the purposes of this section.]”

Sections 19, 32, 34, 35, 36, 37, 37-A, 38, 38-A to 38-E and 40 of the Act read as follows:

“Section 19 - Termination of tenancy:

(1) Notwithstanding any agreement or usage or any decree or order of a Court of law, but subject to the provisions of sub-section (3) no tenancy of land shall be terminated before the expiration of the period for which the land is leased or deemed to be leased otherwise than—

[(a) by the tenant by surrender of his rights to the landholder atleast a month before the commencement of the year:

Provided that such surrender is made by the tenant in writing and is admitted by him before and is made in good faith to the satisfaction of the Tahsildar; or

Provided further that where the land is cultivated jointly by joint tenants or members of an undivided Hindu family, unless the surrender is made by all of them, it shall be ineffective in respect of such joint tenants as have not joined in the application for surrender, irrespective of the fact that the names of all the joint tenants are not mentioned in the certificate];

(b) by the landholder on a ground specified in sub-section (2).

(2) The landholder may terminate a tenancy on the ground that the tenant—

(a) (i) has failed to pay in any year, within fifteen days from the day fixed under ²[the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F.] for the payment of the last instalment of ¹[land revenue due for the land concerned in that year], the rent of such land for that year; or

(ii) if an application for the determination of reasonable rent is pending before the Tribunal or the Collector under Section 17, has failed to deposit within 15 days from the aforesaid date with the Tribunal or the Collector, as the case may be, a sum equal to the amount of rent which he would have been liable to pay for that year if no such application had been made; or

(iii) in case the reasonable rent determined under Section 17 is higher than the sum deposited by him, has

failed to pay the balance due from him within two months from the date of the decision of the Tribunal or the Collector, as the case may be; or

(b) has done any act which is destructive or permanently injurious to the land; or

(c) has sub-divided the land; or

(d) has sublet the land or failed to cultivate the land personally, or has assigned any interest therein; or

(e) has used such land for a purpose other than agriculture;

[Provided that no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this sub-section unless the landholder gives six months, notice in writing intimating his decision to terminate the tenancy and the grounds for such termination]: and

Provided [further] that the tenancy of a tenant who—

(a) is a female or a minor; or

(b) is subject to physical or mental disability; or

(c) is serving in the Naval, Military or Air Forces of India, shall not be determined on the ground only that the land comprised in the tenancy has been sublet by or on behalf of such tenant.

(3) The tenancy of a tenant holding a lease to which Section [7 or] 8 applies shall terminate—

(a) [xxx]

(b) where the landholder is a person who, having served in the Naval, Military or Air Forces of India, in good faith requires the land for personal cultivation on the termination of such service, on the expiration of the year in which such person gives notice in writing to the tenant that the tenancy is terminated; or

(c) on the first day of March, 1951 in a case in which a person deemed under Section 34 to be a protected tenant is entitled under Section 36 to recover possession of the land on that day.

Section 32 - Procedure of taking possession:

(1) A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply to the

Tahsildar in writing in the prescribed form for such possession.

(2) No landholder shall obtain possession of any land or dwelling house held by a tenant except under an order of the Tahsildar, for which he shall apply in the prescribed form.

(3) On receipt of an application under sub-section (1) or sub-section (2) the Tahsildar shall, after holding an enquiry pass such order thereon as he deems fit.

(4) Any person taking possession of any land or dwelling house otherwise than in accordance with the provisions of sub-section (1) or sub-section (2), as the case may be, shall, without prejudice to his liability to the penalty provided in Section 96, be liable to forfeiture of the crops, if any, grown on the land to the payment of such costs as may be awarded by the Tahsildar or by the Collector on appeal from the Tahsildar.

Section 34 - Protected tenants:-

(1) A person shall, subject to the provisions of sub-sections (2) and (3), be deemed to be a protected tenant in respect of land if he—

(a) has held such land as a tenant continuously—

(i) for a period of not less than six years, being a period wholly included in the Fasli years 1343 to 1352 (both years inclusive), or

(ii) for a period of not less than six years immediately preceding the 1st day of January, 1948, or

(iii) for a period of not less than six years commencing not earlier than the 1st day of the Fasli year 1353 (6th October, 1943), and completed before the commencement of this Act, and

(b) has cultivated such land personally during such period:

[Provided that where the landholder is a minor or is serving in the Naval, Military or Air Forces in India, the tenant shall not be deemed to be a protected tenant if before the expiration of one year from the date on which the minor attains majority or the landholder ceases to serve in the said forces, the landholder gives three months' notice in writing intimating his decision to

terminate the tenancy if in good faith he requires the land to cultivate personally:

Provided further that where the landholder is a person permanently incapable of cultivating the land by reason of mental disability the tenant shall not be deemed to be a protected tenant if before the expiry of one year from the death of the land-holder, the person who succeeds to the land gives three months notice in writing intimating his decision to terminate the tenancy if in good faith he requires the land to cultivate personally.

Explanation:— Where the land is held under more than one joint landholders the last two provisos shall not apply unless such landholders are subject to a disability specified in the said provisos.]

Explanation I:— If the person who held such land as a tenant on the date of expiry of any of the three qualifying periods mentioned in clause (a) came to hold the same by inheritance or succession from another person who so held the land or if he has held such land as tenant and is an heir to such other person included the period during which such other person held such land as a tenant shall be included in calculating such qualifying period.

Explanation II:— If the person who held such land as a tenant on the date of expiry of any of the three qualifying periods mentioned in clause (a), held as a tenant at any time within six years before the said date from the same landholder in the same village any other land which he cultivated personally, the period during which he held such other land shall be included in calculating such qualifying period.

Explanation III:— Where any land is held by two or more persons jointly as tenants all such persons shall, if any of them cultivated and continues to cultivate such land personally and if the other conditions specified in this section are fulfilled, be deemed to be protected tenants in respect of such land.

(2) Where more than one person would be entitled under sub-section (1) to be deemed to be protected tenant in respect of any land, then, notwithstanding anything

contained in that sub-section, the only one of such persons entitled to be so deemed shall be—

(a) the person whose qualifying period is the period specified in sub-clause (1) of clause (a) of that sub-section, or

(b) if there is no such person, the person whose qualifying period is the period specified in sub-clause (2) of that clause.

(3) A person who at the commencement of this Act is no longer in possession of land in respect of which he is deemed under sub-section (1) to be a protected tenant shall, notwithstanding anything contained in that sub-section, not be deemed to be a protected tenant in respect of such land if—

(a) he was evicted from such land in pursuance of a decree or order of a competent Court, or

(b) such land is being cultivated personally by the landholder ²[for atleast one year before the commencement of this Act, or after the land was surrendered to the landholder by the tenant], or

(c) a permanent structure has been built by the landholder on such land, or

(d) such land has been permanently diverted by the land-holder to non-agricultural uses.

Explanation:— In sub-sections (2) and (3) of this section and in Sections 35, 36 and 37 references to a person include references to such two or more persons as are referred to in Explanation III to sub-sec. (1).

Section 35 - Decision on claims:-

(1) If any question arises whether any person, and if so what person, is deemed under Section 34 to be protected tenant in respect of any land, the landholder, or any person claiming to be so deemed, may within one year from the commencement of this Act, apply in the prescribed form to the Tahsildar for the decision of the question and the Tahsildar shall, after enquiring into the claim or claims in the manner prescribed declare what person is entitled to be deemed to be a protected tenant or, as the case may be, that no person is so entitled.

(2) A declaration by the Tahsildar that the person is deemed to be a protected tenant or, in the event of an

appeal from the Tahsildar's decision such declaration by the Collector on first appeal or by the Board of Revenue on second appeal, shall be conclusive that such person is a protected tenant and his rights as such shall be recorded in the Record of Rights or, where there is no Record of Rights, in such village record as may be prescribed.

Section 36 - Recovery of possession by protected tenant:-

(1) A person deemed under Section 34 to be a protected tenant in respect of any land of which he is not in possession at the commencement of this Act shall, if he intimates to the landholder within six months of the said commencement that he is willing to hold the land on the terms and conditions on which he held it before he lost possession thereof, be entitled to recover possession thereof on the said terms and conditions from the 1st day of March, 1951.

(2) Sub-section (1) shall have effect notwithstanding that another person may be in possession of the land, whether under a lease which is not due to expiry until after the 1st day of March, 1951, or otherwise, and where such other person is so in possession, he shall be liable, on an application made to the Tahsildar in accordance with Section 32, to be evicted on the said date.

Section 37 - Persons not entitled under Section 34 deemed in certain circumstances to be protected tenants:-

(1) Every person who at the commencement of this Act holds as tenant any land in respect of which no person is deemed to be a protected tenant under Section 34, shall, on the expiration of one year from such commencement or, the final rejection of all claims by any other person to be deemed under Section 34 to be a protected tenant in respect of such land, whichever is later, be deemed to be a protected tenant in respect of such land unless the landholder has before such expiration or final rejection as aforesaid made an application in the prescribed form to the Tahsildar for a declaration that such person is not a protected tenant:

[Provided that where the landholder is a minor or a person serving in the Naval, Military or Air Forces of India,

he shall make the application for declaration before the expiry of one year from the date on which the minor attains majority, of the landholder ceases to serve in the Naval, Military or Air Forces of India:

Provided further that where the landholder is a person permanently incapable of cultivating the land by reason of mental disability, the person who succeeds to the land on the death of the said landholder shall make the application within one year from the date on which he succeeds to the land.

Explanation:— Where the land is held under more than one joint landholders the last two provisions shall not apply unless such landholders are subject to a disability specified in the said provisos.]

(2) If after enquiring in the prescribed manner into such application, the Tahsildar refuses to make such declaration and his decision is not set aside by the Collector on first appeal or by the Board of Revenue on second appeal, the tenant shall be deemed to be a protected tenant.

(3) The rights as a protected tenant of a person deemed under subsection (1) or sub-section (2) to be a protected tenant shall be recorded in the Record of Rights or, where there is no Record of Rights, in such village record as may be prescribed.

Section 37A - Persons holding lands as tenants at the commencement of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Amendment) Act, 1955 to be deemed to be protected tenants:-

[Persons holding lands as tenants at the commencement of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Amendment) Act, 1955 to be deemed to be protected tenants

(1) Notwithstanding anything contained in this Act, every person who at the commencement of the A.P. (T.A.) Tenancy and Agricultural Lands (Amendment) Act, 1955 holds as tenant any land in respect of which he is not deemed to be a protected tenant under this Act, shall be deemed to be a protected tenant if the total area of the land owned by the landholder including the land under

the cultivation of his tenants is more than three times the area of a family holding for the local area concerned:

Provided that nothing in this section shall affect the rights of any other person who already holds a protected tenancy certificate in respect of such land or whose rights as protected tenant are under investigation before a competent authority, if such other person applies to the Tribunal for safeguarding his rights within a period of six months from the commencement of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Amendment) Act, 1955.

(2) The rights as a protected tenant of a person deemed under sub-section (1) to be a protected tenant shall be recorded in the Record of Rights or, where there is no Record of Rights, in such village record as may be prescribed.]

Section 38 - Right of protected tenant to purchase land:-

(1) Notwithstanding anything to the contrary in any law, usage or contract, and subject to the provisions of sub-section (7), a protected tenant shall at any time after the commencement of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Amendment) Act, 1954, be entitled to purchase the landholder's interest in the land held by the former as a protected tenant.

(2) A protected tenant who desires to exercise the right conferred by sub-section (1) shall make an offer to the landholder stating the price which he is prepared to pay for the land holder's interest in the land up to fifteen times for dry lands or eight times of wet lands irrigated by wells and six times of wet lands irrigated by other sources, of the rent payable by him, and where he is not entitled to purchase the whole of the land, the portion thereof which he is not entitled to purchase.]

(3) If the landholder refuses or fails to accept the offer and to execute a sale deed within three months from the date of the offer, the protected tenant may apply to the Tribunal for the determination of the reasonable price of the land.

[(4) On receipt of an application under sub-section (3) the Tribunal shall give notice to the applicant and the

landholder and to all persons who appear to the Tribunal to be interested, of the date, time and place at which the Tribunal will enquire into the application and shall determine the reasonable price of the landholder's interests in the land not exceeding the maximum multiple of rent provided in sub-section (2) in conformity with such rules as may be prescribed:

Provided that where in the opinion of the Tribunal the reasonable price determined under this sub-section, does not sufficiently recompense the landholder for the value of the improvements made by him, such as sinking a well, it shall be competent for the Tribunal, after taking into account the value of the contribution of the protected tenant towards the improvements, if any, to add such further sum as it considers adequate to the price so determined.

(5) The protected tenant shall deposit with the Tribunal the amount of the price determined under sub-section (4)—

(a) either in a lumpsum within the period fixed by the Tribunal, or

(b) in such instalments not exceeding sixteen and at such intervals during a period of not exceeding eight years and on or before such dates as may be fixed by the Tribunal in each case:

Provided that whenever land revenue due on the land is suspended or remitted by the Government, any instalment of the reasonable price payable on such land by the protected tenant shall be similarly postponed:

Provided further that when the reasonable price fixed by the Tribunal is payable in instalments, the protected tenant shall in addition to the instalments be liable for the payment of the land revenue due to the Government on the land till all the instalments are paid.

(6) (a) On deposit or recovery of the entire amount of the reasonable price being made, the Tribunal shall issue a certificate in the prescribed form to the protected tenant declaring him to be the purchaser of the land and such certificate shall be conclusive evidence of the sale as against the landholder and all persons interested therein and the Tribunal shall also direct that the reasonable

price deposited or recovered shall be paid to the landholder:

Provided that if the application of the protected tenant relates to an 'Inam', the Tribunal shall not issue such certificate unless previous sanction of Government has been obtained therefor.

(b) If a protected tenant is permitted to pay the reasonable price in instalments under the provisions of sub-section (5), interest at the rate of three per cent per annum shall be payable by him in respect of the balance of the price due and if he commits default in respect of any instalment the same may be recovered by the Government as arrears of land revenue.

(c) Every instalment deposited by or recovered from the protected tenant shall be paid by the Tribunal to the landholder.

(d) If the protected tenant fails to pay the entire amount of the reasonable price within the period fixed under sub-section (5), or the same is not recovered from him, the purchase by the protected tenant shall not be effective and he shall forfeit the right of purchase of the land, and the amount paid by him towards the reasonable price shall be refunded to him with interest at three per cent per annum together with land revenue paid by him if any, after deducting therefrom the rent due from him for the period:

Provided that if the amount of reasonable price in respect of which the protected tenant has committed default, does not exceed one fourth of the price fixed by the Tribunal under sub-section (5), the right of purchase of the protected tenant shall not be forfeited and the Tribunal shall cause the balance of reasonable price to be recovered as arrears of land revenue and paid to the landholder.

(7) The right of a protected tenant under this section to purchase from his landholder the land held by him as a protected tenant shall be subject to the following conditions, namely:—

(a) If the protected tenant does not hold any land as a landholder the purchase of the land held by him as a

protected tenant shall be limited to the extent of the area of a family holding for the local area concerned.

(b) If the protected tenant holds any land as a landholder, the purchase of the land held by him as a protected tenant shall be limited to such area as along with other land held by him as a landholder will make the total area of land that will be held by him as a landholder equal to the area of a family holding for the local area concerned:

Provided that the land remaining is more than the land which the protected tenant is entitled to purchase under this section, the first preference to purchase the said land, at the prevailing market price in the local area, shall vest in the protected tenant:

Provided further that in the case of purchase by any person other than the protected tenant, the rights and interests of the said tenant in the lease land, shall continue as before.

(c) The extent of the land remaining with the landholder after the purchase of the land by the protected tenant, whether to cultivate it personally or otherwise, shall not be less than two times the area of a family holding for the local area concerned.]

[(8) If in the course of any inquiry under this section any question arises as between the landholder and the protected tenant desiring to purchase land, or as between different persons claiming to be landholders or protected tenants in respect of the whole or any part of the land concerned, regarding—

(a) the area of land which the protected tenant is entitled under sub-section (1) to purchase, or

(b) where he is not entitled to purchase the whole of the land held by him as a protected tenant, the particular portion of that land which he should be permitted to purchase, or

(c) the priority of the rights exercisable by different protected tenants under sub-section (1), or

(d) the person entitled to receive the amount deposited under sub-section (5), the question shall be determined by the Tribunal in the prescribed manner.

Section 38A - Procedure when reasonable price is agreed to between the landholder and protected tenant:-

If in respect of a land held by a protected tenant the land-holder consents to sell his interest in the land to the protected tenant and the reasonable price payable therefor by the protected tenant is agreed to between them, the provisions of sub-sec. (7) of Sec. 38 shall not apply to such sale, and either the landholder or the protected tenant or both jointly, may apply to the Tribunal and thereupon all the provisions of sub-secs. (5), (6) and (8) of that section shall apply mutatis mutandis to such application:

Provided that the reasonable price so agreed to by the parties themselves shall be deemed to be the reasonable price determined by the Tribunal for the purposes of the said sub-sections (5), (6) and (8):

Provided further that if the landholder does not sell the whole of the land held by him but retains some land with him, the extent of the land remaining with him after the purchase of the land by the protected tenant, whether to cultivate it personally or otherwise, shall not be less than the area of a basic holding for the local area concerned:

Provided also that the right of the protected tenant shall be limited to the extent of three family holdings in the local area concerned including the land, if any, owned by the protected tenant.

Section 38B - Procedure when landholder agrees to relinquish his rights in favour of the protected tenant:

If in respect of a land held by a protected tenant, the land-holder concerned intends to relinquish his interest in the land without receiving any consideration therefor, the provisions of sub-sec. (7) of Sec. 38 shall not apply to such a case and the landholder may apply to the Tribunal and thereupon the Tribunal shall issue to such protected tenant a certificate so far as may be as provided for in sub-sec. (6) of Section 38.

Provided that the right of the protected tenant and the grant of the certificate shall be limited to the extent of the three family holdings in the local area concerned

including the land, if any, owned by the protected tenant and that any excess over such extent shall vest in the Government free of all right of the said protected tenant:

Provided further that if the landholder does not relinquish the whole of the land held by him but retains some land with him, the extent of the land remaining with him after the relinquishment, whether to cultivate it personally or otherwise, shall not be less than the area of a basic holding for the local area concerned.

Section 38C - Minimum holding in case of sale:-

(1) If a landholder does not hold land in excess of three family holdings, he may within two years from the date of receipt of a notice in writing from the protected tenant to sell the land to him under sub-sec. (1) of Sec. 38, terminate the tenancy of the said protected tenant in the manner and subject to limits specified in Section 44 or sell the land to him.

(2) If after the termination of the tenancy, the landholder does not within one year from the date on which he resumed possession of the land, cultivate the land personally or having commenced such cultivation discontinues the same within ten years from the said date, the protected tenant shall be entitled to restoration of possession of the land and its purchase in accordance with the provisions of Sec. 38].

Section 38D - Procedure when landholder intends to sell land to a protected tenant:-

(1) If the landholder at any time intends to sell the land held, by the protected tenant, he shall give a notice in writing of his intention to such protected tenant and offer to sell the land to him. In case the protected tenant intends to purchase the land he shall intimate in writing his readiness to do so within ²[six months], from the date of the receipt of such notice. If there is any dispute about the reasonable price payable by the protected tenant for the land, the provisions of sub-sections (3) to ¹[(8)] of Section 38 shall apply mutatis mutandis].

[(2)] If the protected tenant does not exercise the right of purchase in response to the notice given to him by the landholder under sub-section (1) such protected tenant shall forfeit his right of purchase of the same and

the landholder shall be entitled to sell such land to any other person. On such a purchase by any other person; the protected tenant shall forfeit all his rights in the land save those provided for in Section 41.

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

(1) Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, judgment, decree, contract or grant to the contrary, the Government may, by notification in the ²[Andhra Pradesh Gazette], declare in respect of any area and from such date as may be specified therein, that ownership of all lands held by protected tenants which they are entitled to purchase from their landholders in such area under any provision of this Chapter shall, subject to the condition laid down in sub-section (7) of Section 38, stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such lands:

Provided that where in respect of any such land, any proceeding under Sec. 19 or Section 32 or Section 44 is pending on the date so notified, the transfer of ownership of such land shall take effect on the date, on which such proceeding is finally decided, and when the tenant retains possession of the land in accordance with the decision in such proceeding.

Explanation:— If a protected tenant, on account of his being dispossessed otherwise than in the manner and by order of the Tahsildar as provided in Section 32, is not in possession of the land on the date of the notification issued hereunder, then for the purposes of the sub-section, such protected tenant shall, notwithstanding any judgment, decree or order of any Court, or the order of the Board of Revenue or Tribunal or other authority, be deemed to have been holding the land on the date of the notification; and accordingly, the Tahsildar shall notwithstanding anything contained in the said Section 32, either sua-motu or on the application of the protected tenant hold a summary enquiry, and direct that such land in possession of the landholder or any person claiming

through or under him in that area, shall be taken from the possession of the landholder or such person, as the case may be, and shall be restored to the protected tenant and the provisions of this section shall apply thereto in every respect as if the protected tenant had held the land on the date of such notification.

(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"];

(3) Within ninety days from the date of notice of issue of the certificate under sub-section (2), every landholder of lands situated in the area specified in the notification under sub-section (1), shall file an application before the Tribunal for the determination of the reasonable price of his interest in the land which has been transferred to the ownership of a protected tenant under sub-section (1), and if an application is not so filed within such period by the landholder, the Tribunal may suo motu proceed to determine such price and thereupon all the provisions of sub-secs. (4) to (8) of Section 38 shall mutatis mutandis apply to such application;

Provided that if the protected tenant commits default in respect of any instalment, it shall be recovered by the Government as arrears of land revenue and paid to the landholder:

Provided further that if the whole or any part of the price due to the landholder cannot be recovered as arrears of land revenue, the transfer shall not be effective and the amount, if any, already paid by the protected tenant towards the price shall be refunded to him together with interest at three per cent per annum and the land revenue paid by him, if any, after deducting therefrom the rent for the period.

(4) The Government may, for the purpose of giving effect to the provisions of this section by rules, make such supplemental, incidental and consequential provisions as they may deem necessary, such as the procedure for making inquiry to ascertain the extent of the holding of the tenant as on the notified date and the extent of the land which is to be deemed to have been transferred to and vested in the protected tenants"].

["(5) Notwithstanding anything contained in this section or Section 19, the Collector may, suo motu at any time, hold an enquiry with a view to ascertain the genuineness of the surrender of the right made by the protected tenant under clause (a) of sub-section (1) of Section 19, for the purpose of affecting the transfer of ownership under this section, and pass such order in relation thereto as he may think fit:

Provided that no order adversely affecting any person shall be passed under the sub-section unless such person has had an opportunity or making his representation thereto"].

Section 40 - Rights of protected tenant heritable:-

(1) All rights of a protected tenant shall be heritable.

(2) If a protected tenant dies, his heir or heirs shall be entitled to hold the tenancy on the same terms and conditions on which such protected tenant was holding the land at the time of his death 1[and such heirs may, notwithstanding anything contained in this Act, sub-divide inter se according to their shares the land comprised in the tenancy to which they have succeeded.]

(3) If a protected tenant dies without leaving any heirs, all his rights shall be extinguished.

Explanation:- The following persons only shall be deemed to be the heirs of a protected tenant for the purposes of this section:—

(a) his legitimate lineal descendants by blood or adoption;

(b) in the absence of any such descendants, his widow for so long as she does not remarry;

[(4) The interest of a protected tenant in the land held by him as a protected tenant shall form sixty per cent of the market value of all the interests in the land and that of the landholder and of persons claiming under him shall be limited to the remaining forty per cent].”

7. As the factual matrix no way further require repetition, leave about the relevant provisions of the Act reproduced supra, now coming to the propositions:-

7(A). In **Nerella Janiah Vs. Bairam Saiga**², the division Bench of this Court referring to Section 38-E of the Act observed that the statutory benefit of the protected tenancy rights applies only to the protected tenant in lawful possession and it is difficult to premise that who were dispossessed 4 years prior to the notification made under Section 38-E of the Act was in lawful possession of the lands to claim benefit. It referred the wording of Section 38-E running with non-absentee clause of notwithstanding anything in this chapter or any other law for the time being force on the expression holding for not defined in the Act 1950 and Section 2(z) says words and expressions used in this Act but not defined therein shall have the meaning assigned to them in the Hyderabad Land Revenue Act, where the definition in Section 2(6) of holding says, to hold land or to be a landholder or holder of land, means to be lawfully in possession of land whether such possession is actual or not. It was observed that

² 1959 ALT 924

even the respondent was lessee of the land in question during the year 1950-51 how petitioner got back the land is in dispute concerned, the contention is respondent surrendered the land voluntarily in 1951 and the respondent contends he was evicted and it does not make any difference for the purpose of this enquiry to say he does not entitle to get the declaration envisaged in Section 38-E for not in lawful actual possession and if at all he was illegally evicted he could have recourse to Section 32 of the Act, which says a tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply to the Tahsildar in writing in the prescribed form for such possession and once upon a time he is in possession, thereby entitled to get possession as contemplated by Section 38-E of the Act.

7(B). In **Kothakapu Sai Reddy Vs. District Social Welfare Officer, Land Acquisition, Hyderabad** in CCCA.No.143 of 1976 dated 25.10.1977 by Division Bench of this Court, in the appeal against the order dated 25.04.1975 in O.P.No.19 of 1973 passed by Additional Chief Judge, City Civil Court, Hyderabad, on the issue in relation to land in an extent of Ac.20.36 gts of Khanajiguda, hamlet of Alwal Village, Hyderabad, acquired by the Government as per Section 4(1) notification dated 13.01.1972 covered by award dated 04.02.1972, possession taken on 10.02.1972 and the compensation is paid to 9th respondent owner of the land despite telegraphic notice issued by claimant Nos.1 to 8 on 13.02.1972 alleging they were the protected tenants of the land under the Act, on the question referred to civil Court of their entitlement to compensation or not under Section 30 of land

acquisition Act, the learned Additional Chief Judge held the claimant Nos.1 to 8 recorded as protected tenants in the year 1950-51 only and not thereafter in possession including by date of Section 4(1) notification of Land Acquisition Act and thereby not entitled to compensation by referring to Section 40(4) of the Act and the decision in **Nerella Janiah** supra. That is impugned before the High Court, where it is shown the certificate extracts of pahani patraks for the years 1962 & 1963 show Chakula Narsimhulu etc., cultivated the land and possessed other rights and the pahani patrak of the year 1965-1974 show the 9th claimant original pattadar cultivated lands and pahani patraks of 1958-59 shows among the predecessors of claimants, claimant K. Narasaiah shown as having other rights in the land and actual cultivators are Chakula Narasimhulu etc., and the pahani patraks of 1967 for some years show K. Sai Reddy 1st claimant as person having other rights and actual cultivators are Chakula Narasimhulu etc., from which it is clear of claimant Nos.1 to 8 though recorded as protected tenants were never in actual possession after 1950-51 including by the time the land acquired on 13.01.1972 by Section 4(1) notification and from explanation to Section 38-E provides protected tenant who has been dispossessed otherwise than as provided in Section 32, shall be deemed to be in possession of the land on the date of the notification and shall be entitled to be restored to possession on his application and by the time the notification under Section 38-E(1) issued on 01.01.1973, the proceedings of land acquisition Act were completed and land vested in Government, Section 38-E(1) notification dated 01.01.1973 not issued prior to the date of

Section 4(1) LA Act dated 13.01.1972 and Section 38-E(1) notification dated 01.01.1973 since subsequent in point of time is of no avail to the claimants as protected tenants to share compensation under LA Act and coming to Section 40(4) of the Act of 60% of compensation claim arises if the acquired land is held by the protected tenants on the date of Section 4(1) notification of LA Act and as per Section 2(z) of the Act r/w 2(6) of AP (TA) Land Revenue Act and as held in **Nerella Janiah** supra, the benefit of Section 38-E could only accrue to a person who is lawfully in possession of the land as protected tenant and not to the person who was dispossessed. The land owner, 9th claimant on the application, the Tahsildar granted permission under Section 47 & 48 of the Act, which permission is granted after notice to claimant Nos.1 to 8 and the Tahsildar order not set aside by the superior authority and it is not open to claimant Nos.1 to 8 to question the purchase by 9th claimant from the original land holder inamdar and the original landlords did not own more than 2 family holdings and the claimant No.9 own less than 3 family holdings and claimant Nos.1 to 8 as LR's of the protected tenant if at all wanted to purchase could have made offer at that time and not done so and allowed the order of Tahsildar became final cannot question the compensation paid to the 9th claimant by the LAO upheld by the civil Court in Section 30 reference. In fact the expressions in **Kothakapu Sai Reddy supra** placed reliance upon the earlier division bench expression in **Nerella Janiah** supra of to hold or hold land by protected tenant to mean lawful possession to mean actual physical

possession and not of who were dispossessed or surrendered as the case may be.

7(C). In fact, in another Division Bench of this Court in **Chimmapudi Subrahmanyam Vs. Gadipalli Narasimhaiah**³ dated 10.09.1962, the same issue since arisen with reference to Section 5 & 32 and Section 38-E of the Act, it was held that Section 32 of the Act is not applicable to a case where possession taken through Court, from the letter executed relinquishing their interest over properties, once it is voluntary surrendered without any resistance and even voluntary surrender without process of Court to bind, thereby cannot claim the benefits of the Act as protected tenant.

7(D). In fact the definitions of 'held' and 'hold' or 'holds' came for consideration before the full bench of this Court in **Sada Vs. The Tahsildar, Utnoor, Adilabad**⁴, where Sections 5, 19, 27, 28, 38, 44, 34, 37, 37-A & 38-E of the Act by amended Act Nos.3/54, 2/79 & 15/71 and AP (TA) Transfer of Ownership Rules 1973 and AP (TA) Tenancy and Agricultural Lands Rules 1951 are referred and held, by referring to **Nerella Janiah** supra and several other expressions particularly at Para 25 referring to amendment in 1979 to Section 38-E(2), that the power of the Collector suo motu at any time to hold an enquiry under Section 19 with a view to ascertain genuineness of surrender of right made by protected tenant under Section 19(1) of the Act, provided there be no order adversely affecting any person shall be passed, unless such person has had an opportunity of making his representation thereto. The Rules issued in G.O.Ms.No.2064

³ LAWS(APH)-1962-9-6

⁴ AIR 1988 AP 77

Rev.(F) dt.7-5-80 enables the Tahsildar to inquire and restore possession under the proviso to Section 38E(2) and the amendments introduced in 1979 is remedying the defects pointed out in **Chinnaboini Narsaiah v. Tahsildar, Mahaboobabad, Warangal District**⁵ which upheld the constitutional validity of amended Act No.2/79 saying Section 38-E(2) introduced on 11-1-1979 is retrospective and enable restoration of possession by the Tahsildar to the protected tenant who became owner, either before 11-1-1979 or thereafter; and once the ownership certificate was issued to the protected tenant, it was conclusive evidence of such ownership and it should not be challenged 'at the stage of delivery of possession' in the inquiry under the proviso to Section 38-E(2) read with the Rules made in G.O.Ms.No.2064 Rev.(F) dt.7-5-1980 or in a Civil Suit, because of the bar in Section 19 of the Act.

7(D)(i). It was further held in **Sada** supra that it was not necessary that the protected tenant should have been actually in possession on the date of notification under Section 38-E(1) and the words 'held' and 'holding' cannot be construed as referable to actual possession, though possession cannot be restored without notice to persons in possession for providing an opportunity to make their representations. In answering the reference by the Full Bench of any conflict between **Narsaiah's** case and **Chenneiah's** case, the two earlier expressions one rendered before amended Act 2 of 1979 and one rendered after Act 2 of 1979. On the first point whether a protected tenant must have been in physical possession on the date of the notification issued

⁵ (1979) I Andh WR (HC) 23

by the Government under Section 38-E(1) (i.e., 1-1-1973) for becoming owner of the property and for obtaining the ownership certificate. In **Narsaiah's** case supra opined that the protected tenant must be in physical possession on the date of notification, while in **Chennaiah's** case the contrary view was taken. Of course, the amending Act 2 of 1979 did not make any change in the statute so far as Section 38-E(1) or its proviso or Explanation concerned. It was observed, if the Legislature wanted that protected tenants must be holding the land physically on the date specified in the notification issued under Section 38-E(1), it would have made it a specific condition, for no such condition imposed from its wording and it is also clear from the scheme of the Act. From form 5 and Section 38-E that Protected tenants who were finally declared to be 'protected tenants' and included in the Register prepared for that purpose and for whom protected tenancy certificates have been issued, that ownership rights are envisaged in Section 38-E(1), of course, subject to the limitation with regard to extent of holdings as specified in Section 38(7) and to the proviso to Section 38-E(1). Any ambiguity in this regard is clearly removed by explanation to Section 38-E(1) by Act 15 of 1971. The Supreme Court in **State of Andhra Pradesh Vs. Mohd. Ashrafuddin**, interpreted the words 'held' and 'holding' under Section 3(1) of the A.P. Land Reforms (Ceilings on Agricultural Holdings) Act, 1973 of 'held' connotes both ownership and possession and not possible to interpret the word 'held' only in the sense of possession. It is observed therefrom at Para 31 of the full bench judgment that a person 'holds' the land as protected tenant, if he is still a 'protected tenant' on the

notified date, though out of possession. It referred of arguments placed reliance on **Nerella Janaiah** supra and observed at Para 33 (the full bench judgment) that the learned Judges in **Nerella Janaiah** unfortunately did not give any effect to the words actual or not available in the definition. Once the explanation to Section 38-E by amended Act 15 of 1971, introduced deeming a person out of possession as in possession, unless evicted under Section 32, the said decision of the Division Bench in **Nerella Janaiah** ceases to be of any use to the landholders. It is also observed in Para 34, referring to **Bandi Krishna Murthy v. Pasupuleti Venkatesam**⁶, of the decision arose under Section 37-A of the Act, amended in 1955 and the language of which is different from the language in Section 38-E(1) with explanation covered by amended Act 15 of 1971 and after the introduction of the 'deeming' provision thereunder in the first part of the Explanation, this decision is also held of no use to the landholder's case. It is thereby overruled **Narsaiah's** case and approved the view expressed in **Chennaiah's** case by holding that for the vesting of the ownership of land 'held' by a protected tenant under Section 38E(1), it is not necessary that the protected tenant should have been in physical possession on the date of notification and it is sufficient if he continued to hold the status of a 'protected tenant' as on the notified date even if not in physical possession to satisfy the requirements of Section 32(7) of the Act, which is also subject to the proviso to Section 38-E(1). As held in **Chennaiah's** case, restoration of possession to the protected tenant under Section 38-E(1) is not a condition

⁶ (1961) 1 Andh WR 413

precedent for any action under Section 38-E(2) for initiating or granting ownership certificate by overruling **Narasaiah** supra in this regard. It is also held that on the scope of enquiry under Section 38-E(2) and as to the effect of certificate issued thereunder that all objections to the very grant of certificate must be raised before it is granted or by any appeal or revision as the case may be and later cannot be permitted to raise at the stage of delivery proceedings under Section 38-E(2) proviso to the amended Act. It is observed that in case where the landholders have sold the property, it is to be noted that the sales offend the statute, which requires the offer of sale to be made to the protected tenant.

7(E). Coming to the power including under Section 38(5) by the Collector in use of the words at any time notwithstanding in Section 19 or Section 38-E for deciding genuineness of any surrender for the purpose of effecting of transfer of ownership before the amended Act 3/1954 dated 04.02.1954 even oral surrender voluntarily by a surrender was valid if made earlier to it as held in **Seetharamamma v. Badnath Herija**⁷, however after 04.02.1954 it must satisfy the mandatory requirements as held in **Venkanna Vs. Buchamma**⁸.

7(F). In fact a learned Single Judge of this Court in CRP.No.4066 of 1997 subsequent to that full bench expression in **Sada** supra where **Nerella Janaiah** referred and overruled, came again for consideration from the arguments raised against the correctness of the full bench expression in the CRP filed by 2 protected tenants for restoration of possession under Section

⁷ 1959 Andh LT 650

⁸ (1971) 2 APLJ (HC) 266

32(1) of the Act by the LRs of the protected tenant opposed by the land owners where the LRs of the protected tenant claim the land owner with the active support of one Madhava Reddy dispossessed them forcibly and their tenancy rights are still subsisting and third party rights created are not binding. The MRO held tenancy right of protected tenant not terminated thereby under Section 32(1) of the Act, the protected tenants are entitled for restoration of possession. The Joint Collector confirmed the same, against which that revision maintained. The learned single Judge in the revision referring to the Division Bench in **Nerella Janaiah** supra said a person who was dispossessed cannot be held to be in lawful possession of the land, whereas the full bench in **Sada** supra rendered adversely on **Nerella Janiah**, did not give effect to the word 'actual or not' available in the said decision and thereby judgment in **Nerella Janaiah** not correctly decided; however in **Sada** the observations made are by virtue of Section 38-E introduced by amended Act 15/1971 of a person out of possession is deemed to be in possession for purpose of granting of protected tenancy certificate. The grant of certificate under Section 38-E(1) is different from interpretation of the expression to hold the land under Section 40 of the Act, which should be in possession either actual or constructive of the protected tenant at the time of his death; while under Section 38-E, it is deemed possession and not either actual or constructive possession; to say in Section 38-E a legal fiction is created of person out of possession is deemed to have been in possession on the date of notification and under Section 2(z) of Hyderabad Land Revenue Act to 'hold' land means

person out of possession cannot be treated as in lawful possession either actual or not and judgment in **Nerella Janaiah** as per the learned Single Judge is correctly decided and as to adverse comment made by the Full Bench in **Sada** supra against **Nerella Janaiah** and it is just and proper to place the matter before the Bench for consideration in directing the Registry to place the matter before the Hon'ble the Acting Chief Justice to refer to a Bench to consider the correctness of the decision in **Nerella Janaiah**. In fact there is nothing shown of any disposal of said reference and if so with what result if at all upheld **Nerella Janaiah**, that was held by subsequent full bench as not correct law even.

7(G). In **Ponnala Narsing Rao supra** referring to Section 2(r) of the Act in relation to the oral surrender theory propounded against the protected tenant by the land owners from entry in tenancy register showing the protected tenant all through recorded, khasra entry of 1954 shows the land owner to be in possession theory of oral surrender of protected tenancy rights prior to 1954 held cannot be believed. In answering the application under Section 32 of the Act by the protected tenant for possession that, though the same must be filed within the reasonable time, for in case of belated application opposite party must prove to have been adversely effected in showing any changed possession meantime for equities may have arisen in favour of alienation by changed position of spending of amounts and improvements made on land etc., which are to be pleaded and proved. The contention that application under Section 32 filed after unreasonable delay should have been dismissed on that

ground of delay only cannot be sustained on the facts of the case, for no such plea raised by the opposite party of from the belated application, their rights are adversely effected. It is observed in Para 3 of the judgment in **Narsing Rao supra** that though no express period of limitation is provided for filing application under Section 32 of the Act, such application has to be moved within reasonable time, because of such belated applications, the other side may stand adversely affected. It may have changed its position in the meantime. Equities may have arisen in his favour, he may have spent large amounts on land by improving it. But all these questions have to be pleaded and proved. In opposing the applications, for no such plea, it cannot be sustained so also for no plea of adverse possession put forward.

7(H). In **Boddam Narsimha Vs. Hasan Ali Khan (dead) by LR and Others**⁹, the Apex Court held that Section 38-E of the Act has been enacted for those protected tenants who are declared to be protected tenants and included in the register prepared for that purpose. A person becomes protected tenant when he is a holder on the dates and for the periods mentioned in Sections 35, 37 & 37-A. Once a persons becomes a protected tenant, he is entitled to an ownership certificate under Section 38-E. It is observed that, Bala died in 1975 claimed as protected, after his lifetime by his nephew concerned, neither he nor Lrs of Bala nor Bala prior to 01.01.1973 claimed as protected tenant, but for for first time application by the nephew of Bala dated 16.12.1998 through Section 37-A in seeking declaration before the Tribunal-RDO of Bala a protected tenant and consequently a claim of

⁹ 2007 (1) ALD 101 (SC)

ownership certificate under Section 38-E after lapse of 40 years with no explanation for not invoked Section 37-A which came into force by amendment Act 1955, for more than 40 years it was stated word held in **Sada** supra of mere latches would not disentitle the tenant to the relief sought for by him under the Act, so also the other expression in **Bahadur singh Vs. Shangara Singh**¹⁰ of accrued right in favour of the tenant by operation of law does not get defeated merely by omission to have their names recorded in the revenue records. The further observation by the Apex Court is that the Memo dated 11.9.2000 issued by the R.D.O. stating that the particulars of tenants who became protected tenants under Section 37-A was not available though the register contains particulars of 36 other villagers. Then the High Court should have directed the Tribunal to hold an enquiry and compile a register on the basis of the village record, since no person can be affected on account of omissions on the part of the Tribunal in complying with the statutory mandatory provisions of the Act. It is observed further by the Apex Court on the scope of Section 38-E of the Act that, said Section has been enacted for those protected tenants who are declared to be protected tenants and included in the Register prepared for that purpose. A person becomes a protected tenant when he is a holder on the dates or for the periods mentioned in Sections 35, 37 and 37-A. Once a person becomes a protected tenant, he is entitled to an Ownership Certificate under section 38- E. In the case of **Sada** (supra) the High Court held that a person "holds" the land as protected tenant if he is still a protected tenant on the notified

¹⁰ 1995 1 SCC 232

date i.e., 1.1.1973, though out of possession. For the vesting of ownership of land held by a protected tenant under Section 38-E, it is not necessary that the protected tenant should be in physical possession on 1.1.1973. It is sufficient if he continues to hold the status of a protected tenant on the notified date, even if he is not in physical possession. The Act does not merely regulate the relationship of landlord and tenant, but deals with the alienation of agricultural land, and includes transfer of the land holders interest to the protected tenants. Therefore, the grant of pattedari (ownership rights) also finds place in the Act. The benefit of Section 38-E given to persons who hold the lands as protected tenants and who continue to hold the lands as protected tenants on 1.1.1973 and ownership rights are conferred only upon persons who continue to be protected tenants as on 1.1.1973. They form a special class. In **Sada** (supra) it has been held that protected tenants are covered by Chapter IV of the Act. They fall under a limited category. They are referred to in Sections 34, 37 and 37-A introduced by Act No.3/56 and deals with a separate class of persons deemed to be protected tenants. This class of persons is different from the category of protected tenants who fall under Sections 34 and 37 respectively. Section 37-A refers to persons who are holders of the land at the commencement of Amending Act of 1955 (12.3.1956) and those persons were required to be tenants on 12.3.1956 and that they should continue to be tenants till 1.1.1973 and only such category of persons are entitled to Ownership Certificate under Section 38-E. In the present case, even for the sake of argument, if we were to proceed on the basis that Bala was a protected

tenant on 12.3.1956, still Bala became a pattedar vide conveyance dated 23.11.1959, therefore, in any event, the assumed protected tenancy did not continue up to 1.1.1973. In our opinion, therefore, in any view of the matter, the appellant herein was not entitled to the Ownership Certificate under Section 38-E of the Act. Further, Section 38-E(2) read with the A. P. (T.A.) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 contemplates a full-fledged inquiry after notice to the landholders or after hearing objections of any other interested person (vide Rr. 4, 5). Once a certificate is issued, the same is, under Section 38E(2), 'conclusive evidence' of the ownership of the protected tenant, and cannot be defeated by the result of any inquiry under second part of the Explanation to S. 38- E. The inquiry under S. 38-E(2) read with the Rules of 1973 referred to above, is to be done by the Tribunal (the Revenue Divisional Officer) and obviously his decision to grant the ownership certificate will not and cannot be jeopardised by the result of any inquiry by a subordinate official like the Tahslidar, who deals with the granting of possession to a 'protected tenant.

7(I). In **State of Andhra Pradesh Vs. T. Yadagiri Reddy and Others**¹¹ on the Collectors suo motu powers of revision under Section 50-B(4) of the Act in use of the words 'at any time' observed that 25 years after certificate issued and the concerned lands converted and sold to approximately 1100 persons as residential plots, though no period of limitation prescribed, still the Collector on facts held would not be justified in initiating a suo motu action, which has to be within a reasonable time,

¹¹ 2008 16 SCC 299

though the words at any time are used in the provision. The other question arisen therein is lands were subjected to declaration under land reforms ceiling on agricultural holdings Act 1973, opportunity of hearing the protected tenant in possession in ceiling proceedings against landlords, for no notice issued to the respondents and ultimately ceiling case came to be decided against them and thereafter notice of surrender issued for the surplus lands to the tenant in possession as the Tribunals failed to give opportunity of hearing before passing adverse orders, appeal against the High Court's setting aside the order of the Tribunal dismissed by the Apex Court for no merits by confirming the High Court orders. It referred to the earlier expression of the Apex Court in **State of A.P. Vs. S. Vishwanatha Raju & Others**¹², where the Apex Court taken suo moto action, seeing that there was an attempt to take out substantial acreage of 900 acres of land out of the purview of the Ceiling Act by the device of agreements of sale and the concerned officers were negligent in not carrying out the orders of the authorities in revision because of fraud played. In **Ibrahimpatnam Taluk Vyavasaya Coolie Sangham Vs. K. Suresh Reddy and Others**¹³ it was observed in Para 9 on use of the words "at any time" in sub-Section (4) of Section 50-B of the Act that, those cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably and under the guise of "at any time", if suo moto power under sub-Section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to

¹² 1995 (3) SCC 327¹³ 2003 (7) SCC 667

complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo moto power "at any time" only means that though specific period such as days, months or years are not prescribed reckoning from a particular date, that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation.

7(J). In the recent past three judge bench expression in **K.Balreddy Vs. T.Narayana Reddy**¹⁴, it was held by the Apex Court in the civil appeal arisen out of the revision No. 4904/2006, order dated 06.08.2010, passed by this Court, on facts that the Apex Court appeal respondents are the heirs and successors of one Teegala Shivaiah(who died in 1964), was a Protected Tenant in respect of agricultural lands bearing Survey No. 359(old) corresponding to Survey No. 121(new) situated at Koheda Village, Wasool Baqui for the year 1954 and certificate under Sections 35 and 37 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the "Act") also recorded the name of Teegala Shivaiah as Protected Tenant; however the land holders of the said land sold the land to various buyers who in turn further effected sales, in the chain of transfers and now appellants claim to be having ownership rights in respect of the said land, the respondents moved application under Section 40 of

¹⁴ 2016 (6) ALD 7(SC)

the Act before the Deputy Collector and Mandal Revenue Officer only in the year 2001 praying for grant of Succession Certificate in their favour as heirs of said Teegala Shivaiah, who even died in 1964, after notices issued to interested persons, by order dated 27.04.2004 Succession Certificate in respect of the said land in favour of the respondents was granted. Soon thereafter the respondents filed an application under Section 32 of the Act for restoration of possession of the said land. Notices were issued to the appellants in proceedings initiated and thereafter the Deputy Collector/Mandal Revenue Officer, Hyathnagar Mandal Ranga Reddy District by his order dated 13.07.2004 directed restoration of said land and pursuant to the aforesaid order dated 13.07.2004, possession was restored in favour of the respondents on 30.08.2004. The appellants preferred appeals challenging the aforesaid orders dated 27.04.2004 and 13.07.2004. By a common order dated 22.07.2006, the Joint Collector-II, Ranga Reddy District allowed these appeals, observing that though Teegala Shivaiah was the Protected Tenant in respect of the said land, the proceedings granting succession in favour of the respondents were not sustainable as there was no evidence about subsistence of protected tenancy as on the date when the Protected Tenant died and that long time had elapsed since his demise, succession could not be determined, apart from Mandal Revenue Officer was not competent to recognize succession to tenancy. The High Court dismissed the Civil Revision Petition No. 4910 of 2006 preferred by the respondents, on 08.12.2006 at the admission stage by passing following order:—

“There is no dispute nor denial that under **section 40 of the andhra pradesh (telangana area) tenancy & agricultural lands act, 1950, (the act,** for brevity), the jurisdictional Mandal Revenue Officer cannot grant succession to the persons claiming to be the lineal descendants to a protected tenant. In that view of the matter, order of the Joint Collector dated 22/07/2006 impugned in this Civil Revision Petition in so far it relates to setting aside the order of the Mandal Revenue Officer 27/07/2004 passed under Section 40 of the Act does not warrant any interference.

The Civil Revision Petition is accordingly dismissed.
No costs”

The respondents had also preferred Civil Revision Petition No. 4904 of 2006 against the order dated 22.07.2006, by which order granting restoration was set aside, with observation that transaction of sale by the original land holders in favour of third parties of agricultural land under the holding of a Protected Tenant was contrary to provisions of Section 38-D of the Act and as such the appellate authority had rightly found that the present appellants had no locus standi in the matter. It was further observed that there was no evidence to show that the Protected Tenant had ever surrendered his protected tenancy or that he was evicted under Section 19 of the Act, as such the protected tenancy would continue despite the death of Protected Tenant and the rights in that behalf devolved on the successors, by placed reliance on the Full Bench judgement in **Sada v. Tehsildar of 1988**, of no limitation or adverse possession could be raised against the protected tenancy and the respondents being legal heirs and lineal blood descendants of the Protected Tenant, they were entitled to seek restoration of possession.

Similar orders were passed restoring orders granting possession in respect of Civil Revision Petition Nos. 447 and 448 of 2007.

In the facts the Apex Court observed from para.10 onwards of the judgment that:

“10. Section 38-D of the Act prescribes the procedure to be followed when land holder intends to sell the land held by a Protected Tenant. Accordingly the land must first be offered by issuing a notice in writing to the Protected Tenant and it is only when the Protected Tenant does not exercise the right of purchase in accordance with the procedure, that the land holder can sell such land to any other person. The effect of this provision and non-compliance thereof was considered by this Court in *Kotaiah v. Property Assn of Baptist Churches (PVT.)* LTD 1989 3 SCC 424 and it was laid down:—

“(iv) Section 38-D prohibits the landholder from alienating the tenanted land to third parties. If the landholder intends to sell the land, he must give notice in writing of his intention to the protected tenant. The first offer must be given to the protected tenant. It is only when the protected tenant does not exercise the right to purchase, the landholder could sell the land to third parties. The alienation made in contravention of these provisions has no legal effect.”

11. It is not the case of the appellants that alienations effected by the landholders were in conformity with aforesaid provision. The appellate authority was therefore right in holding that the present appellants had no locus standi. It, however, erred in considering the merits of the matter despite having rendered such a finding on the issue of locus standi. **In our view all transactions entered into without following the procedure prescribed in Section 38-D of the Act are without any legal effect as held in Kotaiah's case (supra).**

12. It is well settled that the interest of a Protected Tenant continues to be operative and subsisting so long as ‘protected tenancy’ is not validly terminated. Even if such Protected Tenant has lost possession of the land in question, that by itself does not terminate the ‘protected tenancy’. The observations of the Full Bench of Andhra Pradesh High Court **in Sada's** case (supra) which were quoted with approval by this Court in

Boddam Narsimha v. Hasan Ali Khan-2007(11)SCC 410 are quite eloquent.

“44. In our view, this contention is not correct. If a protected tenant is already in physical possession on the date of notification, there is no problem at all. If proceedings under sections **19, 32 or 44** are pending, the date of vesting gets itself postponed. If the ‘protected tenancy’ stood validly terminated by the date of notification under sections **19, 32 or 44**, in that case, no certificate at all can be issued. But, as long as a person continued to be a ‘protected tenant’ either under sections **34, 37 or 37-a**, as per the Act and has not lost that status, whether he is in actual possession or not on the date of notification, and is also to be ‘deemed’ to be in possession under the first part of the Explanation subject to Section 32(7) and the proviso to section **38-e(1)**, the ownership stands transferred straightway to such protected tenant by the very force of section **38-e(1)**. Further, section **38-e(2)** read with the A.P (T.A) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 contemplates a full-fledged inquiry after notice to the landholders or after hearing objections of any other interested person (vide Rules 4, 5). **Once a certificate is issued, the same is, u/sec.38-e(2), ‘conclusive evidence’ of the ownership of the protected tenant, and cannot be defeated by the result of any inquiry under second part of the Explanation to Section 38-E.** Another reason for this view is that the inquiry under section **38-e(2)** read with the rules of 1973 referred to above, is to be done by the Tribunal (the Revenue Divisional Officer) and obviously his decision to grant the ownership certificate will not and cannot be jeopardised by the result of any inquiry by a subordinate official like the Tahsildar, who deals with the granting of possession to a ‘protected tenant’.”

13. It is not the case of the appellants that the Protected Tenancy of Teegala Shivaiah was terminated in a manner known to law. In the absence of such valid termination of ‘protected tenancy’, the interest of such Protected Tenant continued to be operative and subsisting in law and could devolve on his legal heirs and representatives who could then claim restoration of possession. As laid down in Sada's case (supra) even if the Protected Tenant had lost possession, without there being valid termination of his status as a Protected Tenant, he would still be entitled to all incidents of protection under the Act. In the aforesaid premises, the view taken by the High Court in allowing

Civil Revision Petitions in favour of respondents herein was perfectly right and justified”.

8. Having regard to the above legal position and more particularly from the expression of the Apex Court in **Bahadur Singh supra**, an enquiry is required to be conducted by the Tribunal to compile the PT register on the basis of the permanent village records, if any, if at all for the Joint Collector to reverse the order of the Tahsildar of not granting succession in respect of S.Nos.56, 58 to 61, 65 & 66 for no way shows any PT register entry in favour of N.Venkulu S/o Yellaiah, father of Laxmaiah and Eswaraiah supra and in confining to the grant of the succession of tenancy rights of said Venkulu in favour of his sons by name Laxmaiah & Eswaraiah under Section 40 of the Act from the PT register entries showing only for survey Nos.42, 57, 62 to 64 of Srinagar Village of Maheshwaram Mandal and for the other survey numbers supra covered out of total S.Nos.42, 55 to 66, for the Joint Collector to consider for all survey numbers. There is no dispute on the fact that Laxmaiah & Eswaraiah are the sons of Venkulu. Thus there is no any adjudication for succession but for recording their names and to restore possession if claimed; leave about the lands were acquired for Outer Ring Road project and there is a Section 30 of the Land Acquisition Act reference pending before Civil Court for apportionment and entitlement of compensation in deposit if any to decide.

9. Accordingly and in the result:

9(a). CRP.No.191 of 2014 is dismissed by upholding the order of the Joint Collector in case No.F2/3852/2010 dated 26.12.2013 confirming the order of the Tahsildar in file

No.B/652/2009 dated 08.02.2010 so far as survey Nos.42, 57, 62 to 64.

9(b). CRP.No.293 of 2014 is allowed by setting aside the order of the Joint Collector in case No.F2/945/2010 dated 26.12.2013, of modifying the order of Tahsildar in file No.B/625/2009 to the extent of not granting succession for S.Nos.56, 58 to 61, 65 & 66 and by remanding the matter back to the Joint Collector either to enquire or cause enquire with reference to the original and permanent revenue records showing any other extent and entitlement to the protected tenancy in favour of Venkulu for any succession by the two sons of Venkulu i.e., Laxmaiah & Eswaraiah or the LRs of the late Laxmaiah by name N.Srinivas Goud, N.Srihari Goud and N.Sri Raghu Goud besides wife of Laxmaiah by name Laxmamma and re-determine the same within the scope of the remand supra and by giving notice to the persons interested who are the other parties to the matter herein and any subsequent alienees, if such subsequent alienations are brought before him with proof, so that such alienees from their entitlement to raise contest by bringing on record the facts if any of the land is as it is in condition or any improvements made and of its value in consideration to work out any equities and therefrom to give final disposal on merits.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 26.04.2018

Note: L.R. Copy to be marked

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