

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.16546 OF 2005

ORDER:

Heard Mr.Sdharth Sharma holding for Mr.B.S.Reddy for petitioners, Mr.Harish, the Assistant Government Pleader for Revenue, Mr. E.Madan Mohan Rao & Mr.Abhishek Reddy for respondents and Mr.Sudarshan, party-in-person.

The petitioners pray for writ of certiorari, call for the records leading up to and inclusive of orders in Case No.F2/5450/2001 dated 12.04.2005 of respondent No.1, declare the impugned order as null and void and consequently restore the order in Case No.B/1542/2001 dated 07.09.2001 of respondent No.2.

The subject matter of the writ petition is an extent of Acs.42-23 gts. in Survey Nos.58,59,66 and 658 of Kapra Village (for short referred to as 'subject matter').

The issue arises under Sections 32 and 90 of the A.P. (Telangana Area) Tenancy and Agricultural Act, 1950 (for short 'the Act').

The Assistant Government Pleader has produced the record from the Joint Collector-1, Ranga Reddy District/R1 and the Mandal Revenue Officer, Keesara Mandal, Ranga Reddy District/R2. The circumstances as borne out in the record are adverted to chronologically and thereafter the averments of the petitioners and the respondents are adverted to the extent required.

M. Narayana son of Sham was the pattadar of subject matter. Varla Ramachandra Reddy and Dundigalla Mallaiah were recorded as protected tenants. On 22.07.1952, M.Narayana

through registered sale deed bearing No.26/1952 sold the subject matter along with Survey Nos.1 and 2 in favour of Chindam Durgaiah and Doddi Komaraiah (for short referred as purchasers). The sale deed dated 22.07.1952 refers to permission applied and granted for alienation of property covered by the deed, by Deputy Collector under Sections 47 and 48 of the Act vide file No.76/307/50 dated 15.04.1952. The purchasers' names are mutated in revenue records. Kasra Pahani (1954-55) refers to permission granted by Deputy Collector under Sections 47 and 48 and also the claim given up by Varla Ramachandra Reddy and Dundigalla Mallaiah i.e. protected tenants. The names of purchasers of subject matter were incorporated in Revenue Records and the purchasers enjoyed the property as absolute owners and possessors. The date of demise of protected tenants is not stated by the persons who claim through them but from the record, it appears, Varla Ramachandra Reddy died in or about 1969 and Dundigalla Mallaiah in 1971. The counsel for petitioners i.e. successors-in-interest of protected tenants states that Varla Ramachandra Reddy died in 1979 and Dundigalla Mallaiah in 1957 as both the dates are referred at this stage of the narration so that the effect of the demise on the rights claimed by either the purchasers or the subsequent purchasers can be considered and decided by this Court by taking note of both the dates. The successors-in-interest of purchasers namely, Chindam Durgaiah and Doddi Komaraiah through General Power of Attorneys after converting the subject matter into a layout getting layout approved by the Grampanchayat, sold plots in subject matter to third parties. The purchasers of plots have filed WPMP

Nos.36445 of 2014, 38130 of 2014, 38298 of 2014, 41287 of 2014 and 44577 of 2015 to come on record as respondents and oppose the writ prayer.

While matters stood thus, the successors- in- interest or family members of protected tenants i.e. Varla Ramchandra Reddy and Dundigalla Mallaiah filed for succession under Section 40 of the Act. The application filed by them was taken on file in Case No.D/3948/2000. The successors- in- interest of protected tenants have given the date of death of Varla Ramachandra Reddy as 14.02.1977 and as regards Dundigalla Mallaiah, the date of death was not stated. On 04.04.2001, succession was granted in favour of writ petitioners/ successors- in- interest of protected tenants. Basing on the succession granted in favour of the writ petitioners, on 18.04.2001, application under Section 32 of the Act was made and taken on file as Case No.B/1542/2001 for restoring possession of subject matter in favour of writ petitioners. The application filed by writ petitioners reads thus:

“PETITION FILED UNDER SEC.32 OF A.P.(TELANGANA AREA) TENANCY AND AGRICULTURAL LANDS ACT,1950.”

The above named petitioner submit as follows:

- 1.That the first and second petitioners father and third fourth petitioner's Grand father along with fifth petitioner's grand father are the original protected tenants for the Land admeasuring Ac.44.38 gts in Sy.No.58, 59,66,658 of Yellareddyguda, Kapra Revenue Village, Keesara Mandal. The said petitioners name was also recorded in the Tenancy Register as a Tenant. The petitioners being LR's of original protected Tenants holding the Tenancy rights over the above said lands as per the Sec.40 of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950.

The petitioners father and Grand fathers has been in continuous possession and enjoyment of the said lands. After death of original protected Tenants, the respondents illegally occupied the lands. The respondents have no manner of right whatsoever on the said lands and the petitioners are entitled for restoration of possession of the said lands as per section 32 of the Tenancy Act. The petitioner also enclosed all the particulars in the Performa prescribed by the Rules.

Therefore, it is prayed that this Hon'ble Mandal Revenue Officer may be pleased to restore the possession of the said lands in favour of the petitioners by dispossessing the respondents herein in the interest of justice.

Sd/-

Petitioners"

The writ petitioners have arrayed the LRs/ respondent Nos. 14 to 24 herein of Chindam Durgaiah and Doddi Komaraiah as respondents before 2nd respondent for the relief of restoration of possession. The successors in interest of Chindam Durgaiah and Doddi Komariah consented to the prayer for restoration of possession of subject matter and the consent resulted in the order dated 07.09.2001. The operative portion of the orders reads thus:

"The counsel for the petitioners retreated the contention raised in the petition and prayed for issue of orders in respect of Sy.Nos.58,59 ,66 and 658 of Kapra (Vg.)

The Respondents have filed counter on 18.08.2001 stating that the petitioners are the successors in the title of the original P.T.'s for an Ac.42.23 gts. in Sy.No.58,59,66,658 of Kapra (Vg) and that they have been in possession of the land since long time and therefore they have no objection for restoration of the possession to the petitioners as per P.T. Register and prayed to pass appropriate orders.

Heard the arguments and perused the records. A perusal of the P.T register of Kapra Village shows that the schedule lands covered by Sy.No.58,59,66 and 658 reveals the names of the pattadars and the P.T's as follows:

<u>Sy.No.</u>	<u>Extent</u>	<u>Name of the pattadar</u>	<u>Name of the P.T.</u>
58	9-32 Dry	N.Narayana	Ramchandra Reddy Dundigalla Mallaiah
59	11.03 Dry	-do-	-do-
66	5.06 Dry	-do-	-do-
658	16.22 Dry	-do-	-do-

Total; 42-23

Therefore, it is evident that the ancestors of the petitioners herein are the protected tenants of the schedule lands covered by Sy.No.58,59,66 and 658 for an extent of Ac.42-23 gts. However the land covered by Sy.No.58 of Ac.1-20 gts. were covered by Houses and therefore the petitioners are not pressing for the land covered by Sy.No.58 of Ac.1-20 gts possessed by S.E. Srinivas. Therefore, it is ordered restoring the physical possession of the land of Ac.40-33 gts covered by Sy. No.59,66,658 and part of Sy.No.58 covered are entitled as P.T.'s as provided U/s 32 of A.P. (T.A.) Agrl. Act, 1950. Further the V.A. Kapra Village is directed to incorporate the names of the petitioners in the Revenue Records as possessors after completion of the necessary formalities since the respondents themselves have accepted to restore the land to the petitioners."

Second respondent on 11.10.2001 reduced the extent in Survey No.68 from Acs.16- 22gts. to Acs.7-32gts.

On 22.10.2001, the purchasers/ respondent Nos.3 to 11 of plots filed appeal before 1st respondent under Section 90 of the Act, challenging the order dated 07.09.2001 of 2nd respondent made under Section 32 of the Act. The writ petitioners/successors in-

interest of protected tenants were impleaded as respondents 1 to 5 before the 1st respondent- appellate authority. The successors- in- interest of Chindam and Doddi families have not participated in appeal before the 1st respondent, apparently for the reason that the successors- in- interest of Chindam and Doddi families have consented to restore possession to the LRs of protected tenants.

The case of respondents 3 to 11 before the 1st respondent is that the successors- in- interest of Chindam and Doddi families executed General Power of Attorneys, converted the subject matter into plots, laid roads, made development of agricultural land into non-agriculture and sold the plots from the year 1982-83 onwards. When the application for restoration was made the subject matter was not agricultural land. Respondents 3 to 11 along with the purchasers of individual plots claimed possession and exclusive enjoyment of the respective extents purchased by them. Respondents 3 to 11 alleged collusion between successors- in- interest of Chindam and Doddi families with the successors- in- interest of protected tenants/writ petitioners. The succession order and also the order for possession under Section 32 of the Act have been brought into existence. It is further contended that writ petitioners do not have right both by conduct and record for seeking restoration of possession of the subject matter. The writ petitioners did not furnish minimum details on any aspect having relevance to prayers under Sections 32 and 40 of the Act. The non-impleadment of persons having interest in the subject matter before 2nd respondent vitiates the proceedings under Section 32 of the Act.

The respondents pray for allowing the appeal by setting aside the order dated 07.09.2001 of 2nd respondent.

The writ petitioners assert that in the revenue records, the names of protected tenants are maintained and continued for the subject matter. According to writ petitioners, the 2nd respondent ordered for delivery of possession on being satisfied with the rights held by protected tenants for the subject matter. The writ petitioners assert that the petitioners being children of protected tenants are entitled for possession under Section 32 of the Act as the protected tenants were illegally dispossessed from the subject matter. The lands remain as agricultural lands. The allegation of collusion between the successors -in -interest of Chindam and Doddi families and the LRs of protected tenants is denied. The writ petitioners prayed for dismissing the appeal in Case No.F2/5450/2001.

The 1st respondent through the order dated 12.04.2005, impugned in the writ petition after taking note of the records, Kasra, Sesala held as follows:

“On perusal of the Lower court record it is found that the name of Sri M.Narayana is recorded as pattadar and the name of Chandra Reddy, Mandigalla Mallaiah & other recorded as Protected Tenant in respect of the land bearing Sy.Nos.58,59,66,658,659 and 660 measuring Ac.9-32, 11-03, 5-06, 16-26, 10-31 & 12-38 gts. respectively situated at Khapra village. The land bearing Sy.No.659 & 660 have been rounded off from P.T. Register as per file No.B2/1837/70 dated 11.9.170.

On perusal of the Registered Document No.26 of 1952 dated 22.7.52 it is found that Sri M.Narayana through his GPA holder has sold the land bearing Sy.No.1,2,58,59 & 658 admeasuring Ac.33-17 gts situated Khapra village, Keesara Mandal in favour of

Doddi Kumaraiah and Chindam Durgaiah after obtaining the Sale permission U/s.17 & 18 of Tenancy Act from Deputy Collector vide No.76/307/50 dated 15.4.52 and the same was implemented in Revenue records from 1953-54 onwards as it is evident from the Paisal Patti of 1953-54 produced by the appellants and they are in possession and enjoyment of the suit land as it is evident from the extract of the Pahanies produced by them. The successors of the above pattedars have appears to made the land into plots and sold to various persons from 1991 onwards as it is evident from the documents produced by the appellants.

On verification of the Lower court record it is found that Legal heirs of P.T. have filed a petition before the Mandal Revenue Officer for grant of succession U/s.40 of Tenancy Act on 14.10.2000, but the order is not disclosing the date of death of the P.T and passed the orders vide No.B/3948/2000 dated 4.4.2001., Further it is found that the respondent No.2 to 8 in Lower court order and R7 to R13 here in the appeal have filed a petition before the Mandal Revenue Officer stating that the respondents have no objection for restoration of possession as per their Tenancy rights and as per Section 32 of Tenancy Act. The remaining respondents in the Lower court have not filed any counter.

In view of the above it is clearly evident that the date of death of original P.T. are not disclosed. The land was purchased after obtaining permission U/s.47 & 48 of Tenancy Act in 1952 through Registered Document No.26/1952 dated 22.7.52. The oral surrender is permissible at that time till Amendment Act III of 1954 as it is found that the original P.T. have also not taken any steps during their life time. On perusal of the Photos submitted by the appellants it is found that they have changed the nature of the land. The Mandal Revenue Officer has also stated in his order that part of the land is covered by houses are deleted for restoration of possession.

Under Section 40 of the Tenancy Act the Legal heirs of the protected tenants are having limited scope that the heirs entitled to hold the tenancy on the same terms and conditions on which such P.T. was holding the land at the

time of his death. Thus the definition of the hold or holding as per the Legal (Glossary published by the Government of India 1992 read as follows:

Hold Means: I have or keep as ones own

To own as property

To be in possession or enjoyment

To occupy

Holding Means: The land which is held by a person

Held Means : Held the ownership

Use of as ones own

Use Means: Utilization

Occupation

The Apex Court held that though no express period of limitation is provided for filing application under Section 32 of the Act, such application have to be moved within reasonable time. It may be because of such belated applications, the other side may stand adversely effected. 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 surprisingly reported in 1998 (9) SCC 183.

In the present case the subsequent purchasers or their successors have made the land into plots and sold to various persons and they have not taken any steps from 1952 (i.e. from the date of purchase of land) it is nothing but belated petition.

In view of the above appeal filed by the appellants is allowed and set aside the order passed by the Mandal Revenue Officer Keesara in Case. No.B/1542/2001 dated 7.9.2001.”

Hence the writ petition.

The writ affidavit does not dispute the petitioners have substantially adverted to above details and have raised following contentions against the order impugned in the writ petition.

Mr.Sddarth Sharma contends that petitioners 1 and 4 died and their LRs are not before the Court. An implead petition was

served on petitioners on 08.03.2018. A request for impleading the LRs of writ petitioners 1 and 4 and to file counter affidavit in implead petition was made and this Court rejected the opportunity, therefore, he proceeds to address the Court on merits. As a prelude or caveat is added for proceeding in the matter, this Court refers to the docket orders dated 09.03.2018 and 13.03.2018 which read thus:

Date:09.03.2018:

Mr.Sekhar representing Mr.B.S.Reddy requests one week time.

The request is vehemently opposed by Mr.Abhishek Reddy and Mr.Madan Mohan Rao.

Keeping in view the difficulty now expressed by Mr.Sekhar, the registry is directed to list the writ petition on 13.03.2018.

It is made clear that no further time will be granted."

Date: 13.03.2018:

On 09.03.2018, at request of Mr.Sekhar representing the petitioners, the writ petition was adjourned to today by making clear to Mr.Sekhar that no further time will be granted since opposition from the learned counsel appearing for respondents is vocal and also real. The writ petition is listed for final hearing today and Mr.Sidharth Sharma renewed his request for further adjournment to enable the petitioners to make their submissions. The request for adjournment is vehemently again opposed by all the counsel. Hence, the arguments have been taken up."

Whether the petitioners are diligent in taking steps to bring LRs on record or not and a counter affidavit in implead petition is warranted etc. ought not detain this Court for two reasons (i) Mr.Abhishek Reddy submits that without filing a memo or death certificate of deceased petitioners time is sought and (ii) there is

sufficient representation of plot owners as respondent Nos. 28 to 107 in the writ petition. Therefore, nothing new is introduced by parties proposing to come on record. Since a caveat for proceeding to argue writ petition on merits is made, this Court is of the view that they are adverted to the extent required before proceeding to consider the merits.

It is contended on behalf of petitioners that the order of 1st respondent dated 12.04.2005 is vague, does not reflect application of mind by 1st respondent and also cryptic. The 1st respondent by expressing a view on succession granted by respondent No.2 committed illegality which is not under challenge. The 1st respondent proceed tangentially and allowed the appeal filed by respondents 3 to 11 and held that the petition filed by writ petitioners under Section 32 of the Act is belated. It is further contended that respondents 3 to 11 failed to plead and prove equities. According to writ petitioners, the period of limitation is not stipulated for maintaining an application under Section 32 of the Act. The permissions under Sections 47 and 48 of the Act stated to have been obtained before alienation of subject matter has never seen the light of the day. Therefore, veracity of these orders needs to be doubted. The appellate authority committed illegality by relying on the recitals in the sale deed in accepting that permissions under Sections 47 and 48 of the Act are granted. The reliance for this purpose on the recitals is violative of principles of natural justice. The order of 1st respondent setting aside the order dated 07.09.2001 of 2nd respondent in its entirety is vitiated by illegalities and infirmities. The 1st respondent ought to have examined the basic documents

of Kapra Village before reversing the order of 2nd respondent directing delivery of possession of subject matter to writ petitioners. The findings of 1st respondent vis-à-vis Survey No.66 are untenable and now the claim of some of the implead petitioners who have purchased land in Survey No.66 cannot and ought not to be considered by this Court by expanding the scope of writ petition. The non-consideration of Kasra Pahani and Sesala by 1st respondent vitiates the order as illegal and hence liable to be set aside. The oral surrender of rights of protected tenants is impermissible in law and the sale deeds executed in 1952 do not affect the rights of protected tenants or their successors -in- interest. The petitioners pray for setting aside the order of 1st respondent.

Mr.Abhishek Reddy appearing for respondents 3 to 11 firstly refers to the details stated in the appeal filed before the 1st respondent. He states that the subject matter was sold through registered sale deed No.26/1952 dated 22.07.1952 (Document Nos.26/1952), Document No. 2 of 1952 dated 22.07.1952 in favour of Chindam Durgaiah and Doddi Komaraiah. The pattadar (Narayana) obtained permission under Sections 47 and 48 of Tenancy Act as was required for sale of agricultural land. The protected tenants have surrendered their right before 1954. The names of purchasers namely Chindam Durgaiah and Doddi Komaraiah were mutated in all the revenue records. The sale deeds when executed, the surrender of right by P.T. orally is not prohibited. The Kasra Pahani refers to surrender of right by the protected tenants, the predecessors -in- interest of writ petitioners. The orders under Sections 47 and 48 of the Act are referred to in the sale

deeds. The tenants did not challenge the order under Sections 47 and 48 of the Act or the mutation ordered in the names of Chindam Durgaiyah and Doddi Komaraiah. The writ petitioners, in the year 2000 applied for granting succession under Section 40 of the Act. The writ petitioners even assuming without admitting are the successors- in -interest of tenants, after four decades from the date of permissions granted under Sections 47 and 48 of the Act and the mutation of entries in the name of Chindam and Doddi families could not have reopened settled issues through succession proceedings under Section 40 of the Act. The application under Section 32 of the Act is not maintainable in law and fact. According to him, the writ petitioners did not disclose the date of demise of tenants much less the alleged illegal dispossession by the Chindam and Doddi families. The application under Section 32 was filed completely ignoring the transactions from 1952 till the year 2000. The writ petitioners before 2nd respondent did not implead the persons who have subsisting interest in the property. The order passed by the 2nd respondent is a result of collusion between writ petitioners and respondent Nos.12 to 27. The restoration of possession could be considered by R.2, if the possession of tenants or their successors - in -interest is satisfactorily pleaded and proved. In the case on hand, M.Narayana, pattadar sold the property to Chindam and Doddi families, the purchasers in turn developed the subject land into plots, through GPAs have sold under registered sale deeds to several individuals. The filing of application by writ petitioners under Section 32 in the circumstances referred to above ought not to have been entertained, considered and decided by

2nd respondent. He relies on Ponnala Narasing Rao v. Nallolla Pantaiah¹. He vehemently contends that the right under Section 32 of the Act is not a right to be used as a stealth weapon for tactical benefits or to blackmail purchasers or owners of property. It is for this reason, the person invoking Section 32 ought to act diligently and within reasonable time. The 2nd respondent exercises the jurisdiction to further the object of restoration of agricultural land to a tenant illegally dispossessed. The jurisdiction must be exercised judiciously. The 2nd respondent ought not to become a source for litigious claims. Replying to the submissions of writ petitioners, he contends that the writ petitioners at any rate could not complain against the order of 1st respondent as being cryptic or that the 1st respondent examined the order passed under Section 40 of the Act. The writ petitioners, who have not disclosed barest of bare details while seeking enforcement of their right under Section 32 of the Act now are precluded from complaining against the order of 1st respondent. Steps for restoration of possession were initiated without impleading the parties who have subsisting interest in the properties, could not find fault with the order of 1st respondent. According to him, the order of 2nd respondent is the result of collusion and ordering restoration of possession under Section 32 of the Act is illegal and untenable. The 1st respondent considered the jurisdictional aspect of the order passed by 2nd respondent, and in the process held that for invoking the remedy under Section 32 of the Act, after lapse of several decades no reason is forthcoming. He submits that law as laid down by the Supreme Court in Ponnala

¹ (1998) 9 SCC 183

Narsing Rao case is applied by the 1st respondent and this Court is bound by the ratio laid down in Ponnala Narsing Rao case. He contends that the writ petitioners at this length of time could not weave argument on the details of permissions granted under Sections 47 and 48 of the Act for alienating the property. The tenants namely, Varla Ramachandra Reddy and Dundigalla Mallaiah being aware of the changes in revenue records, never challenged the permission granted, much less mutation in favour of purchasers of the property. The acquiescence by the tenants during their life time ought to be appreciated while entertaining the prayer of writ petitioners for restoration of possession. The writ petitioners in collusion with original owners or successors-in-interest or purchasers have obtained orders for restoration of possession and try to take possession from individual plot owners. Mr. Abhishek Reddy adverting to the suppression of facts on the dates of death of protected tenants contends that the writ petitioners in the application filed under Section 40 have stated the date of demise of Varla Ramachandra Reddy as 14.02.1977 and Dundigalla Mallaiah as "nil". In the application under Section 32, the date of death of both the protected tenants is given as "nil". The writ petitioners in the application filed for mutation they informed the death of Varla Ramachandra Reddy and Dundigalla Mallaiah as 08.08.1965 and 09.04.1960 respectively. In the writ affidavit, date of demise of Varla Ramachandra Reddy is mentioned as 1979 and Dundigalla Mallaiah as 1975. These omissions speak in volumes against the maintainability of application before respondent No.2. The principle laid down by the Apex Court in Ponnala Narsing Rao

case is applicable on all four to the facts of the present case. The 1st respondent on the question of maintainability merely followed Ponnala Narsing Rao case and allowed the appeal. The writ petitioners ought not to fasten burden on plot owners and call upon them to plead and prove equities. He concludes his submissions with force that the writ petitioners are indulging in chance litigation and no right is vested in them to seek restoration of possession of subject matter and he prays for dismissing the writ petition.

Mr. E. Madan Mohan Rao supports the impugned order on same grounds canvassed by respondents 3 to 11. He further contends that the Supreme Court in Ponnala Narsing Rao case while deciding the time within which the application under Section 32 ought to be filed has taken note that there is no express period of limitation provided for filing application under Section 32 of the Act. The Apex Court has thereafter held that the application ought to have been moved within reasonable time. The Apex Court in the context of applications filed with enormous delay observed that the other side may stand adversely affected. Therefore, the equities which would have arisen with the change in position etc. are to be taken note. Therefore, the writ petitioners firstly did not give the reason for filing the application in 2000. It is for writ petitioners to show that the application is filed within reasonable time. Therefore, the writ petitioners when moved the application, should have come with clean hands by giving all the details. Every detail including change of position, creation of right in favour of innumerable plot owners, spending huge money for infrastructure etc. which would if disclosed go against the petitioners are suppressed. The contention

of writ petitioners that the order of 1st respondent is cryptic, is unavailable and incorrect. The brevity complained against the order of 1st respondent is pervasive in the applications filed by petitioners and the order passed by 2nd respondent. He lays much emphasis on the entries noted by 1st respondent in Khasra and Sesala and prays for dismissing the writ petition.

Mr. Abishek Reddy and Mr. E. Madan Mohan Rao contend that the writ petition does not make out a ground for interference under Article 226 of the Constitution of India, more particularly, under certiorari jurisdiction. According to them, this Court can interfere against order impugned under writ of certiorari only when broad tests of judicial review are satisfied.

The Assistant Government Pleader submits that the writ petitioners having not given details before the 2nd respondent or the 1st respondent cannot find fault with the order of 1st respondent as cryptic or is vitiated by non-application of mind. The Assistant Government Pleader has placed the record of respondents 1 and 2 for inspection of the Court. He contends that no ground warranting interference by this Court under Article 226 of the Constitution of India is made out by petitioners, both in fact and law. The writ petition is liable to be dismissed.

The other counsel appearing for purchasers of plots added as respondents adopted the submissions of Mr. Abhishek Reddy, Mr. E. Madan Mohan Rao and the Assistant Government Pleader and pray for dismissing the writ petition.

I have perused the record and noted the submissions of the counsel appearing for the parties. From the above consideration, the following points arise for decision of this Court.

- (i) whether the claims of petitioners for restoration of possession under Section 32 of the Act is tenable, valid and available?
- (ii) whether the order of 1st respondent warrants interference of this Court under Article 226 of the Constitution of India?

Points (i) & (ii):

The circumstances preceding to the filing of applications for succession in favour of petitioners and thereafter for restoration of possession and the averments stated by the parties before 1st and 2nd respondents are referred in great detail in the preceding paragraphs. For brevity, the circumstances are not adverted to in detail once again.

On 18.04.2001, the writ petitioners filed application under Section 32 of the Act for restoration of possession of subject matter. The application filed by writ petitioners does not contain the dates of death of the tenants and further does not disclose the change of land from agriculture to non-agriculture. The record does not disclose that a PT certificate is enclosed by the writ petitioners. The 2nd respondent recorded a finding and directed restoration of possession on the consent given by the respondents impleaded in file No.B/1542/2001. Respondents 3 to 11 are the aggrieved parties if possession is disturbed and restored in favour of writ petitioners.

Appeal was filed before the 1st respondent. Document Nos.26/1952 and 2/1952 refer to the permissions granted under Sections 48 and 49 of the Act.

The names of purchasers viz., Chindam Durgaiah and Doddi Komaraiah were incorporated in the revenue records as pattadars and possessors. The predecessors-in-interest (i.e. protected tenants) of writ petitioners have not challenged any of the orders or decisions, and on the contrary have allowed those orders and decisions to become final during their lifetime. The names of Chindam Durgaiah and Doddi Komaraiah continued in revenue records. The writ petitioners did not file any record showing enjoyment of subject matter by the tenants or writ petitioners as their successors. The 2nd respondent without verifying the ground position or the state of affairs reflected in the revenue records straightaway ordered restoration of possession on consent given by the persons who have no interest in the subject matter. Now the contention of petitioners is that the order of 1st respondent is laconic and cryptic. This Court, in the facts and circumstances of this case, is of the view that whether an order is a reasoned order or laconic depends on the averments and evidence the parties place in support of their case. As already noted, the writ petitioners at earliest stage have not furnished required details and/or on the contrary have suppressed material circumstances. Respondent Nos.3 to 11 since were aggrieved by an order which is brief but affecting their right have filed appeal before the 1st respondent. As already noted, respondent Nos.3 to 11 while contending that there is suppression of material facts have

pleaded that the respondents are purchasers of plots and the application filed after 48 years from the date of alienation in favour of Chindam Durgaiiah and Doddi Komaraiah is not maintainable. The respondents have further stated that the purchasers are owners of small extents of land. The 1st respondent in this background considered the order of 2nd respondent and referred to the *ratio decidendi* of the Apex Court in Ponnala Narsing Rao case and held that there may not be a period prescribed by law for filing an application under Section 32 of the Act. However, it is required to be moved within reasonable time. The belated applications adversely affect the interest of other side. The changed circumstances cannot be ignored. Thereafter, by referring to the timing of filing the application after 48 years, the 1st respondent held that the application filed by writ petitioners is belated and accordingly set aside the order of 2nd respondent in file No.B/1542/2001 dated 07.09.2001.

Now the extended objection of petitioners is that respondent Nos.3 to 11 did not plead and prove how the equities have arisen in their favour and their failure to plead such details comes in their way in relying on *Ponnala Narsing Rao* case, still a finding in their favour is recorded by respondent No.1. In the considered view of this Court, the contention of writ petitioners is misconceived and liable to be rejected with other contentions raised by petitioners. At this stage, let me refer to relevant paragraphs in *Ponnala Narsing Rao* case, which read thus:

“So far as the first contention is concerned, it must be noted that only documentary evidence was produced

before the authorities below on the basis of which judgments were rendered against the petitioner by the lower appellate court as well as by the High Court. The theory of "oral surrender" has been disbelieved by the appellate court by relying on evidence in the shape of entry in tenancy register which shows that the respondents' predecessor was a protected tenant all throughout and that entry was never changed. So far as the petitioner is concerned, he relied upon a khasra entry which shows that in 1954 he was put in possession as an owner of this land and there was an endorsement that in prior years he was in possession since three years. In which capacity was he in possession prior to 1954 is a question which could have been examined only in the light of the petitioner's own evidence on oath. He did not think it fit to enter the box to prove that case. Under these circumstances it was rightly held by the lower appellate court and as confirmed by the High Court that the theory of oral surrender of protected tenancy rights prior to 1954 cannot be believed. The first contention, therefore, fails.

So far as the second contention is concerned, it is true that through no express period of limitation is provided for filing application under Section 32 of the Act, such applications have to be moved within reasonable time. It may be because of such belated applications, the other side may stand adversely affected. It may have changed its position in the meantime. Equities may have arise in his favour, he may have spent large amounts on land by improving it. But all these questions have to be pleaded and proved. Surprisingly, no such contention was ever canvassed much less tried to be proved on any equitable ground by the petitioner. Therefore, this second contention on the facts of the present case cannot be sustained. It has also to be noted that no plea of adverse possession was put forward by the petitioner in support of his case.

So far as the second contention is concerned, it is the petitioner's own case that the respondents' predecessor had surrendered the tenancy rights in favour of the ex-inamdar and from him he had purchased the lands. But before that the Government had auctioned the land on one year basis. Consequently at the time when

the petitioner entered the land, whether it had remained an inam land or not was an important question to be decided. No such contention was canvassed by the petitioner either before the appellate court or before the High Court. Hence this third contention cannot survive for consideration at this last stage.”

After taking note of the decision of the Apex Court, this Court is of the view that the objection referred to by petitioners is misconceived and the writ petitioners having approached the authority for the relief of restoration of possession of land continuing to treat the land as agricultural land, but failed to disclose any of the incidents for 48 years, cannot now call upon the purchasers/ respondents 3 to 11 or other respondents to disclose sales, change of agricultural land into a layout and sale of plots by Chindam Durgaiah and Doddi Komaraiah through GPAs in favour of several individuals. Therefore, the ground raised by petitioners against impugned order on equities is misconceived, liable to be rejected and accordingly rejected.

The further contention is that the 1st respondent assumes existence of permissions granted under Sections 48 and 49 of the Act, without those proceedings actually being filed before the 1st respondent. Therefore, there is no permission for alienation in favour of Chindam Durgaiah and Doddi Komaraiah. The writ petitioners are not the tenants but claim as the successors-in-interest of tenants of subject matter. The recitals in the registered documents refer to the permissions granted under Section 48 and 49 of the Act. The restoration of possession now claimed by petitioners is not on the ground that there is no permission under

Sections 48 and 49 of the Act. Therefore, this objection is irrelevant and liable to be rejected. By reference to permissions, registered sale deeds were executed. Based on the registered sale deeds executed by pattadar M.Narayana, mutation in favour of purchasers in revenue records was carried out. The tenants, according to writ petitioners, lived up to 1975 and 1979. The tenants did not question any of the proceedings which resulted in execution of sale deeds, mutation etc. The petitioners do not question those proceedings. The petitioners contend that the 1st respondent ought not to have allowed the appeal without examining the basic documents of Kapra village. This contention is also misconceived, for the 1st respondent did not take up the claim of petitioners with a presumption that the petitioners can be treated as successors-in-interest of tenants and whether they are entitled for restoration of possession of subject matter or not, but has considered whether the application for restoration of possession of subject matter is within reasonable time or not.

The chronology of dates referred to above clearly shows that the application filed under Section 32 of the Act is not filed within reasonable time and no details are furnished by the writ petitioners on any of the happenings from 1952 till 2000. Further, after perusing the record from the office of 2nd respondent, this Court has no reason to record a finding that the petitioners in collusion with the LRs of purchasers under registered document dated 22.07.1952 obtained order of restoration of possession of the subject matter of writ petition. The persons who have interest in the property have

not been impleaded and persons who have sold the property to third parties are impleaded as respondents, their consent was taken and order of restoration was passed. The contention of Mr. Abhishek Reddy that the right under Section 32 of the Act is not a stealth weapon to use according to one's choice is tenable. With the rise in prices of land and infrastructure development, the right if it is to be enforced must be within reasonable time by disclosing the details of subject matter. The petitioners do not contend that the ratio in Ponnala Narsing Rao case requires filing a petition within reasonable time, but raise new grounds in the writ petition. The petitioners since have failed to show that the application filed by them is within reasonable time and that the application discloses the required details for consideration of a prayer under Section 32 of the Act, this Court is of the view that the findings recorded by the 1st respondent are justifiable and no ground is made out warranting interference of this Court.

The writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

S.V. BHATT, J

01st May, 2018

Sp/Lrkm