

HON' BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5177 of 2011

ORDER:

The revision petitioner by name Thirupathi Reddy filed this revision under Section 91 of Andhra Pradesh (Telangana Area) Tenancy & Agricultural Lands Act (for short 'the Act') against the order of the Joint Collector, Mahabubnagar, dated 12.08.2011 in case No.F1/ 03/ 2010. The respondents are 1st respondent Ranga Reddy since died represented by his Lrs respondent Nos.2 to 5 i.e., Smt. Jangamma, Smt. Anasuyamma, Prashanth Kumar and Smt. Aruna.

2. The contentions in the grounds of revision are that the impugned order of the Joint Collector, Mahabubnagar, dated 12.08.2011 in case No.F1/ 03/ 2010 is contrary to law, merits of the case and is vitiated with irregular exercise of jurisdiction, the Joint Collector should not have ignored the fact that late Buddaiah who was the protected tenant of the suit lands in Sy.Nos.171 & 172 was when father of the revision petitioner and the revision 1st respondent, the certificate under Sec.38E of the Act obtained by revision 1st respondent or at his instance even same was granted in his name will not deprive the share of the revision petitioner therein for both are the LRs of deceased original tenant-Buddaiah and hence the conclusion of the Joint Collector having ignored the above in his saying that the applicant/ revision petitioner did not prove that he is also a joint tenant/ co-tenant, is untenable. The Joint Collector should have seen that the allegations in the plaint for partition filed by the revision petitioner against the revision 1st respondent for his share as both are brothers and sons of late Buddaiah has even been admitted by the respondents in their written statement and ultimately the suit was decreed for partition.

3. The learned counsel for the revision petitioner reiterated the above impugning the order of the Joint Collector supra in the course of hearing the revision.

4. Among respondent Nos.2 to 5, the LRs of late 1st respondent, respondent Nos.2, 3 & 4 refused to receive the registered letters and returned with that endorsement more than once and for respondent No.5, it was served and still they all failed to attend and hence taken as heard and perused the material on record.

5. In deciding the revision, coming to the factual matrix of the lis, the revision petitioner and the revision 1st respondent (whose Lrs are respondent Nos.2 to 5) are brothers and sons of the original protected tenant late Buddaiah for the land in Sy.Nos.171 & 172 measuring an area of Ac.16-04 gts. & Ac.9-39 gts. respectively situated at Yadira Village of Mahabubnagar Mandal & District and said Buddaiah was so recorded as protected tenant under the provisions of the Act. The respondent No.1, by misrepresenting that he was as if only son of said late Buddaiah, obtained certificate in his name in file No.A9/ 7/ 74-Yadira from the office of the Revenue Divisional Officer, Mahabubnagar, without any notice to the revision petitioner and behind his back. The revision petitioner having come to know of the same in the month of February, 2007, obtained the certified copy of the said order of the R.D.O on 05-02-2007 and filed an appeal before the Joint Collector, Mahabubnagar, in case No.F1/ IA-3/ 2007 questioning the grant of certificate in the name of respondent No.1 alone. In view of the dispute raised by respondents herein about the petitioner being the son of Buddaiah, the office of the Joint Collector by judgment dated 07-06-2008 dismissed the appeal by observing that since the revision petitioner did not produce any record to the effect that he is also one of the sons of the late Buddaiah, the

appeal cannot be entertained. However in the said order, the Joint Collector observed as follows: "The appellant is at liberty to approach civil or revenue courts at any future time with appropriate documentary evidence for redressal of his claim." The petitioner in fact filed a suit in O.S.No.420 of 2004 on the file of the Junior Civil Judge at Mahabubnagar for partition and separate possession of joint family lands claiming himself to be the younger brother of the respondent No.1 and being the second son of late Buddaiah, in said suit the respondents have categorically admitted that the petitioner is the second son of late Buddaiah and ultimately the said suit for partition has been decreed granting half share to the revision petitioner. The revision petitioner again renewed his request to the office of the Joint Collector in case No.F1/ 03/ 2010 to set aside the order passed by the R.D.O. in case No.A9/ 7/ 74-Yadira in granting the ownership certificate under Sec.38 E of the Act only in the name of the 1st respondent, by enclosing the copy of plaint, written statement and preliminary decree etc., before the Joint Collector, Mahabubnagar to show that late Buddaiah died leaving behind two sons of whom 1st respondent was the eldest and the revision petitioner is the youngest and this fact is also not denied by the respondents and in fact admitted in the written statement filed in said suit in O.S.No.420 of 2004 that the petitioner is son of late Buddaiah. The dismissal of the appeal by the Joint Collector as if that the revision petitioner/ appellant did not produce any documentary evidence to the effect that he is also co-tenant/ joint tenant over the suit land is quite contrary to the admitted facts and law.

6. The relevant portion from the order of the Joint Collector for more clarity reproduced as under:

"The case was finally heard on 07.05.2011. Perused the material available on record. The contention of the Appellant is that he is

the L.R. of Late Buddaiah, who is having half share in the suit lands bearing Sy.No.171 and 172 of Yadira (V) Mahabubnagar (M), but the lower Court has conferred Ownership Rights of the said lands U/s 38-E of A.P. (T.A) Tenancy and Agriculture Act 1950 in favour of the Respondent No.1. Further it has been stated that the Appellant had previously filed Appeal before this Court aggrieved by the order of the Lower Court issued in file No.A9/ 7/ 74 which has been dismissed by the then Joint Collector, Mahabubnagar vide Proceeding No.F1/ IA-3/ 07, on the ground that the Appellant did not substantiate with any record of evidence to prove that he is also succeeding L.R. of the suit Property, though adequate time and opportunity has been afforded. Since the Appellant has submitted sufficient evidence it has been requested to allow the appeal and pass order for inclusion of the name of the Appellant as one of the L.R. of late Buddaiah along with the deceased Respondent No.1 in the 38-E Certificate issued by the Lower Court. The Counsel for the Respondent filed counter stating that this court has already passed orders on 7-6-2008, in Appeal File No.F1/ IA-3/ 07, dismissing the Appeal and therefore the Appellant has either to establish his rights by approaching the civil court or file appeal Petition in the Revenue Commissioner/ Hon'ble High Court. As such it has been requested for dismissing the appeal.

Examined the case, it is noticed that the plea of the Appellant is for getting $\frac{1}{2}$ share in the suit lands. The ownership rights were conferred to the protected tenant under section 38-E of Tenancy Act, 1950. The Appellant did not produce any documentary evidence to the effect that he is also co-tenant/ Joint Tenant over the suit lands. In the absence of such evidence, it has to be presumed that the matter is of private partition, which can be adjudged only by civil court.

In view of the above the appeal is dismissed.

The order further reads that the Appellant claims that he has no knowledge about the said proceedings all these days and also about non inclusion of his name on the said Certificate and after he obtained a C.C. of Sec.38-E Certificate on 05-02-2007 he came to know about the said fact. The civil suit O.S.No.420/ 2004 was decreed and a petition to pass Final decree was filed and the Commissioner's report in the said suit was also filed by the

petitioner. The counsel for the Respondents contended that the Appellant herein had no claim or share or right in the lands bearing Sy.Nos.171 and 172 of Yadira Village, these survey numbers were not added or included in the suit schedule properties in the Civil Suit O.S.No.420/ 2004. This itself is sufficient to say that the Appellant had no share in the said lands and the Respondents have absolute ownership and rights over the said properties and thereby he kept quiet for all these years i.e., for about 34 years and is now making false claim over the lands keeping in view of much hike in the market value of the lands in question. According to the respondents, the Patta Certificate issued in the year 1974 U/s 38-E of the Tenancy Act cannot be amended at this juncture and also that, when serious questions as to right and title of the properties are involved, it is for the civil court to decide and not the Revenue Courts. The respondents' counsel contended that the Respondent No.2 herein had already gifted the lands in Sy.Nos.171 and 172 in favour of the Respondents No.2 to 5 herein through Registered Gift Deed Dated: 05-10-2005 and the names of the Respondent No.4 has been incorporated in R.O.R. and other Revenue Records as absolute Owner, Pattadar and possessor. The proceedings were issued by the M.R.O. Mahabubnagar vide orders Dt.02-03-2006 in File No.ROR/ 11819/ 2006. The Respondent No. 4 herein, in turn, on account of his family necessities, had alienated the lands in Sy.Nos.171 and 172 of Yadira Village through Registered Sale Deeds in favour of third parties and thus, the lands are in possession of the prospective and bonafide purchasers. The Appellant has not added them as parties to the appeal. Any order, behind the back of the purchasers, amounts to miscarriage of justice.

7. Even from the above, there is no dispute on the facts of the revision petitioner is brother of revision 1st respondent and they are sons of late Buddaiah, but for what they contend of the revision petitioner even revision 1st respondent obtained certificate way back in 1974 for the lands in question in his name, kept quiet all through for having no right and whatever the properties covered by the partition decree are different from the properties covered by the present claim. There is

nothing according to law even shown or considered or discussed of any extinguishment of right of one of the legal heir's right of succession from certificate obtained without showing him or them by the other legal heirs of the original protected tenant. For answering the lis, it is also relevant here to mention some of the provisions and propositions.

8. 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.]”

8(a). Among sections 19, 32, 34, 35, 36, 37, 37-A, 38, 38-A to 38-E and 40 of the Act:

“ Section 19 speaks on termination of tenancy that:

(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 Faslī 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 Faslī 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 landholder 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 land-holder:

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].”

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

10. In Sada Vs. The Tahsildar, Uttoor, Adilabad¹, the full bench of this Court referring to 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 held 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. 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. 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. Once the explanation to Section 38-E by amended Act 15 of 1971, has introduced deeming a person out of possession as in possession unless evicted under Section 32. It is also held that on the scope of enquiry under Section 38-E(2) and as to the effect of certificate issued

¹ AIR 1988 AP 77

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.

11. In Boddam Narsimha Vs. Hasan Ali Khan (dead) by LR and Others², 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 person 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 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 ownership certificate under Section 38-E after lapse of 40 years with no explanation for not invoking 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 Singh³ of accrued right in favour of the tenant by

² 2007 (1) ALD 101 (SC)

³ 1995 1 SCC 232

operation of law does not get defeated merely by omission to have their names recorded in the revenue records.

12. In the recent past three judge bench expression in K.Balreddy Vs. T.Narayana Reddy⁴, 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 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

⁴ 2016 (6) ALD 7(SC)

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 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".

13. From the above legal position, coming back to the facts, there is nothing even in the case on hand of any oral partition after death of Buddaiah between the revision petitioner and revision 1st respondent being his sons, much less to say in that partition there was any allotment of this property to the share of revision 1st respondent by taking some other property or by relinquishing his rights over the property by the revision petitioner. This aspect the learned Joint Collector did not at all consider. Once the revision petitioner and revision 1st respondent being sons of late Buddaiah are entitled to succession and once there is no dispute on the entitlement of the succession, the question of still driving the revision petitioner to go to civil Court and obtain declaratory relief

for his entitlement over the property so to direct by the Joint Collector does not arise, more particularly, for the fact that even certificate under Section 38-E for succession granted in the name of any one of the legal heirs of the original protected tenant it shall enure for the benefit of all the legal heirs to say the revision petitioner and revision 1st respondent being sons of late Buddaiah. Thus the dismissal order of the appeal by the learned Joint Collector is unsustainable and is liable to be set aside.

14. Accordingly and in the result, the Civil Revision Petition is allowed and the order of the Joint Collector is set aside and the matter is remanded to the Joint Collector either to enquire or cause enquire with reference to the original and permanent revenue records showing the total extents and entitlement to the protected tenancy in favour of Buddaiah for succession by the two sons of Buddaiah i.e., Thirupathi Reddy & late Ranga Reddy for the share of late Ranga Reddy to be entitled by his LRs by name Smt. Jangamma, Smt. Anasuyamma, Prashanth Kumar and Smt. Aruna.

Consequently, miscellaneous petitions, if any shall stand closed.

No costs.

Date: 01.05.2018
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Dr. JUSTICE B. SIVA SANKARA RAO