

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P.Nos.1552, 1544, 2663, 4444 and 4447 of 2015

COMMON ORDER

The core of the lis, covered by the 5 revisions came for common disposal, is a rival claim as to who are the PTs in respect of the property situated in old Sy.Nos.27/2 and 27/3 of Koheda village, Hayathnagar Mandal, Ranga Reddy district, to detail further the factual matrix on the background of the lis, all these 5 revisions are against the orders of the Joint Collector No.1 Ranga Reddy District, dt. 11.07.2014 respectively in the case File bearing Nos.F2/5472, 5473, 5474, 5475 and 5476 of 1993. Said common order is outcome of remand orders of the High Court in the earlier round of litigation covered by C.R.P.Nos.2171 of 2009, 2174 of 2009, dt.27.04.2009, 3055 of 2010, dt.06.07.2010, 5017 of 2007, dt.02.11.2007 and 206 of 2011, dated 21.01.2011 where the impugned was the appellate orders of said Joint Collector, dt.15.02.2005 in the self-same File Numbers referred supra of 1993. Said appeals before the Joint Collector were in fact outcome of the orders of the Revenue Divisional Officer (for short, 'the RDO') in File No.N/3043/1978, dt.23.02.1984 confirming ownership rights u/sec.38(e) of the APT&AL Act, (for short, 'the Act 1950') by dismissing the appeals on 15.02.2005 as barred by limitation with no merits in respect of the land bearing Sy.No. 27/2(old) corresponding to Sy.Nos.135 and 136(new) of Ac.1-00guntas and Ac.1-34guntas, and in Sy.Nos.27/3(old) corresponding to new Sy.Nos.132, 131 and 150 of Ac.17.28guntas, Ac.10.28guntas and Ac.25.14guntas respectively of Koheda village, Hayathnagar Mandal of Ranga Reddy District.

2. All the 5 revisions were in fact maintained by self-same 6 revision petitioners viz; 1) kandada Bakka Reddy, 2) Kandada Krishna Reddy, 3) Kandada Narasimha Reddy, 4) Kandada Mohan Reddy, 5) Kandada Ranga Reddy who are sons of late Satti Reddy who is brother of 6th petitioner Kandada Yadi

Reddy, to say said Satti Reddy and Yadi Reddy are sons of one Yellaiah, the so called original PT for the said lands.

3. The revisions were maintained originally against the Joint Collector and the RDO, East Division of Ranga Reddy district as respondents 1 and 2 representing by the learned Govt. pleader for Arbitration, among the others but for in CRP No.1552 of 2015.

3-a). In CRP No.1552 of 2015 is concerned, the original respondents are 1) Syed Ghani Miyan, 2) Syed Iqbal, 3) Mir Nissar Miyan, 4) Syed Musthaq and 5) Mohd. Pasha who are sons of late Syed Nabi. Their addresses were shown in the revision as were in appeal before the Joint Collector, as residents of R/o.1-1-768/1/2, New Bakaram, C/o S.L.N.Chary, Gandhi Nagar, Hyderabad. The Notices sent by Registered Post returned of no such persons at the addresses and there was substituted service by paper publication in AndhraJyothi daily, dt.04.02.2017 as per CRPMP No.5094 of 2015.

3-b). It is while so, after they remained exparte from the substituted service, the unofficial respondents 6 to 20 filed petition CRPMP No.3068 of 2017 for their impleadment with the contest that they purchased some of the plots in new Sy.Nos. 131 and 132 and most of them raised in the plots basement that were highhandedly removed by revision petitioners 1 to 6 from which police complaint lodged covered by Cr.No.435 of 2015, dated 05.05.2015 of Hayathnagar Police Station. The revision petitioners were initially granted Section 38(e) Certificate under the Act, 1950 and for some of the lands for which they were having Protected Tenancy (for short, 'PT') rights insofar as old Sy.Nos.27/2 and 27/3=New Sy.Nos. 135,136,131,132 and 150, one Syed Zainulabedin and others were granted Section 38(e) certificate and not to the revision petitioners.

3-c). Aggrieved thereby at the belated stage, the revision petitioners against the same, filed appeal before the Joint Collector that was ended in dismissal on 15.02.2005 and they filed revision that was disposed of by remanding the matter to the Joint Collector to give an opportunity and pass fresh orders after enquiry. There were as per their say no notices served on the said original pattadars covered by the appeal impugment in showing C/o(care of)address as Sri S.L.N.Chary, Advocate, though he died somewhere in 2005 or 2006, instead of sending notices to the residential address of the appeal respondents rather to the C/o address of said Advocate SLN Chary from which the original pattadars were exparte and the matters were heard by the Joint Collector in their absence and suppressing the fact as to the nature of the land and behind back of the original pattadars, the revision petitioners are proceeding with the matter to cause prejudice to the proposed implead parties' rights who claims from the unofficial respondents of the revisions and they are trying to dispossess them and trying to remove the stones with the help of JCB which made them to report to Hayathnagar Police covered by Cr.No.435 of 2015 supra, as they could not stop their unlawful activities, some of them filed O.S.No.108 and O.S.109 of 2015 on the file of the learned Junior Civil Judge, Hayathnagar against the revision petitioners 1 to 6, which are pending. They came to know of the revisions on enquiry about obtaining of the interim orders of status quo and because of they are bonafide purchases for value to protect their interest and to prevent the attempt of revision petitioners to dispossess them, they seek impleadment to contest the revisions. Their claim is as bonafide purchasers for value by change of hands right from the original pattadar Syed Zainulabedin representing by GPA K.Venkat Reddy the particulars of the plot numbers of the Implead Petitioners claimed to have purchased set out in CRPMP Nos.3068 of 2016 in CRP No.1552 of 2015, in CRPMP

No.3071 of 2016 in 2663 of 2015, in CRPMP No.3072 of 2017 in CRP No.4447 of 2015 and CRPMP No.3070 of 2017 in CRP No.4444 of 2015 are as follows:-

S.No.	Implead Petitioner	Plot	Extent	Document
1	Implead Petitioner No.1	Plot No. 151 and 152	400Sq. Yards	Registered sale deed No. 2776/2008 dated 18.06.2008
2	Implead Petitioner No.2	Plot No. 51 and 50 Part in Sy. No.131	Not mentioned	Registered sale deed No. 16104/1989 dated 06.12.1989
3	Implead Petitioner No.3	Plot No. 149 and 150 in Sy.No.131 and 132Part	400 Sq. Yards	Registered sale deed No. 1626/2009 dated 10.07.2009
4	Implead Petitioner No.4	Plot No. 13 in Sy.No. 131/P	258 Sq. Yards	Registered sale deed No. 4545/2012 dated 07.11.2012
5	Implead Petitioner No.5	Plot No.5 in Sy. No. 131	207 Sq. yards	Registered Agreement of sale cum GPA with possession deed No. 2304/2013 dated 16.03.2013
		Plot No. 6 in Sy.no.131	200 Sq. Yards	Registered Agreement of sale cum GPA with possession deed No. 2305/2013 dated 16.03.2013
6	Implead Petitioner No.6	Plot o. 4	222 Sq. Yards	Registered agreement of sale cum GPA with possession deed No. 2303/2013 dated 16.03.2013
7	Implead Petitioner No.7 to 9	Plot No. 122 in Sy.No. 131/P and 132/P	200 Sq. Yards	Registered sale deed No. 6790/2004 dated 19.06.2004
		Plot No. 117 to 121 in Sy. No. 132/P	1000 Sg. Yards	Registered sale deed No. 4795/2004
		Plot No. 135 to 139 in Sy. No. 132/P	1000 Sq. Yards	dated 01.05.2004

		Plot No. 141 in Sy. No. 132/P	222 Sq. Yards	
		Plot No. 142 to 144 in Sy. No. 132/P	600 Sq. Yards	
		Plot No. 157 and 158 in Sy. No. 132/P	400 Sq. Yards	
		Plot No. 159 in Sy. No. 132/P	305 Sq. Yards	
		Plot No. 160 in Sy. No. 132/P	200 Sq. Yards	
		Plot No. 161 in Sy. No. 132/P	183 Sq. Yards	
			Totally admeasuring 3910 Sq. Yards in Survey No. 132/P	
10	Implead Petitioner No.10	Plot No. 5 in Sy. No. 132/P	533 Sq. Yards	Registered Agreement of sale cum GPA with possession deed No. 11255/2005 dated 13.12.2005
11	Implead Petitioner No.11	Plot No. 46 in Sy. No. 131/P	222 Sq. Yards	Registered sale deed No. 3493/2004 dated 31.03.2004
12	Implead Petitioner No.12	Plot No. 3 in	444 Sq.	Registered sale deed No.
13	Implead Petitioner No.13	Plot No. 6 in Sy. No. 131	427.8 Sq. Yards	Registered sale deed No. 2706/2012 dated 28.07.2012
14	Implead Petitioner No.14	Plot No. 162 in Sy. No. 131 and 132 (Extent not mentioned)	200 Sq. Yards	Registered sale deed No. 19/2010 dated 07.01.2010
15	Implead Petitioner No.15	Plot No. 42 in Sy. No. 131 and 132 (Extent not mentioned)	200 Sq. Yards	Registered sale deed No.395/2012 dated 08.10.2012

Thereby, they sought for impleadment.

4. The implead petitions stated supra in all the 5 revisions were opposed by the revision petitioners 1 to 6 saying the implead petition is abuse of process and they are neither necessary nor proper parties. So far as the

land is concerned, the pattadar is Yellaiah- grandfather of revision petitioners 1 to 5 and father of revision petitioner No.6 and was granted originally Section 38(e) certificate and revenue was paid to the Government covered by Wasool baki as a PT, his name is reflected and judgment of the Commissioner of Lagandari(Land Revenue), dt.16.03.1955 also besides Final Agricultural Tenancy Record. However to their surprise, certain names were entered in record behind back from which on coming to know, they filed appeals to set aside the impugned P.T. certificates issued by the Tahasildar,dt.23.02.1984 and the Joint Collector passed a common order,dt.11.07.2014 against Syed Zainulabedin, Khaja Moiddin, Syed Mahamud by Legal Representatives, Syed Ghani Miyan and others and Syed Abdul Hameed and against the dismissal order of the Joint Collector, revisions filed in High Court that were remanded. The documents on which the proposed parties placed reliance are fabricated and invalid including the so called Section 38(e) certificate in favour of their so called predecessors in title. Ultimately, all the implead petitions were allowed by order dt.08.11.2017.

5. The revision grounds in CRP No.4444, 4447, of 2015 are that the order of the 1st respondent-the Joint Collector, is contrary to law and facts of the case as he failed to appreciate the contentions raised in the written arguments and also failed to know how the order of the then R.2-RDO, granting 38-E certificate in favour of the R.3-Syed Zainulabuddin on 03.02.1984 is bad in law and further failed to notice and understand the R.3 is not entitled to 38-E certificate in respect of land in Sy.Nos.27/2 and 3 of Koheda village of about Ac.50.00gts. The order of the R.1 stating that 38-E certificates were issued to all the PTs as per corrected PT Register including appellants is incorrect and false. The R.1 failed to see Addl.RDO (Land Reforms Tribunal) Hyderabad cannot exercise powers for correction of PT Register and to nullify the certificates that were already granted and has no

authority to exercise powers under Rule 3(2) of Rules, 1956 and thereby even if any corrections are made they are ex facie illegal and not valid in law. The R.1 failed to see that the grandfather of appellants Kandada Yellaiah was issued Tenancy Certificate u/sec.35 and 37 of Hyderabad Tenancy and Agricultural Lands Act, 1950 and the same cannot be cancelled by correcting the same under correction Rules. The R.1 failed to see that once a correction was made in the year 1955 by Lagandari Commissioner, dt.16.03.1955 and in the said Judgment it was clearly mentioned remaining numbers i.e. Sy.No.27/2 and 3 on which previously Kandada Yellaiah and Thatichettu Devaiah Kowldars will continue is final and no corrections can be made thereafter that too by an officer who has no power and jurisdiction. Hence, to allow the revisions by setting aside the orders of the R.1.

5-a). The revision grounds in CRP No.2663 of 2015 and almost similar in CRP No.1544 and 1552 of 2015 are that the order of the 1st respondent-the Joint Collector, is contrary to law of Act, 1950 of Sections 19, 34 and 35 and also contrary to the Judgments of the Apex Court as well as High Court of AP. It is further averred in CRP No.2663 of 2015 that in fact the matter is squarely covered by the expressions of AIR 1989 SC 1753, AIR 2010 SC 313, the An.W.R.1966 page 490, the An.W.R.1974 page 328 and the An.W.R.1960 page 334. The R.1 failed to appreciate the facts on record i.e. P.T.Record, Wasool Baki Register are crystal clear that the petitioners are PTs. It is further averred in CRP No.2663 of 2015 that the R.1 is under wrong notion that the report L.R.No.61/1/LRR/77, dt.15.02.1977, in which stating that the petitioners are not in physical possession of the subject land. In fact, the said enquiry report is not at all valid in the eye of law and void ab initio. The R.2-RDO have no power under Act, 1950 to publish the provisional list with regard to land in question in the present revision and in fact in the so called provisional list the names of the unofficial respondents were not there. The

R.1 failed to appreciate the fact on record that the so called enquiry report supra, dt.15.02.1977 whereas the provisional list published in the year 10.02.1984. Therefore, there is a seven years delay to issue the so called provisional list without any fresh enquiry upto date particulars is null and void and the R.2 has no power and jurisdiction to issue 38-E certificates to the unofficial respondents and the same is clearly fraud on power and nullity and the same is also clearly stated in the expression of (1986) 1 SCC page 133, para 119. The R.1 failed to appreciate the fact that in (the petitioner's) his written argument clearly stated that the petitioner did not surrender the land to anybody and still they are in possession, having the same was written in the judgment but he failed to give an answer and simply silent on the aspect in order to help the unofficial respondents for wrongful gain. The R.1 and R.2 failed to appreciate the fact that the grandfather of the petitioners got issued PTs and Tenancy certificate in the year 02.11.1951. In view of the above fact that once a certificate was issued it cannot be altered or modified and it become a final in view of the above 5 Judgments. The R.1 is under quasi-Judicial authority and he must apply his mind and pass the order strictly in accordance with the law. The R.1 ought to have cancelled the 38-E certificate issued by the 2nd respondent in favour of the unofficial respondents and he relied on the expression of the Apex Court (7J) in AIR 1962 SC page 1621 para No.183. the R.1 failed to appreciate the fact on record that the unofficial respondent made an application before the R.2 self-claimed that they are PTs, the form of application by the unofficial respondents is quite contrary to the Rule 3 (Form-A, Form of Application by a tenant under Section 35) of the Rules, 1951. On the face of the said application, it shows that the official and unofficial respondents are colluded for a wrongful gain and dismiss the claim of the petitioners. The R.1 failed to appreciate the fact on record that the names of the petitioners are rounded and at the end of the PT record, there is

an endorsement in the Urdu language by the Tahasildar, and without any valid reason which is a highly suspicious, the so called Syed Nabi s/o Syeed Ameer Ali etc., names are entered and remaining Sy.No.27/3-2 the previous Kouldhar Kandada Yellaiah and even according to that they are entitled as a PT in Sy.No.27/3-2(old), corresponding Sy.Nos.136,135,132, 150 and 131 at least this fact is not appreciated by the R.1. It is a settled principle of law that the quasi-judicial authority is under an obligation to act judicially. In the instant case the 1st and 2nd respondents not only violating the law but also without jurisdiction in passing the impugned orders as per the Apex Court's (7 Judges) decision reported in AIR 1962 SC page 1621 para-14. He further submits that if the impugned order obtained by fraud, it can be treated as null and void and ultra vires as held by the Apex court in its judgment AIR 1964 SC page 72 in para-6(page 82). Hence, to set aside the order dated 1.07.2014, passed by the R.1-Joint Collector, Ranga Reddy district.

6. The averments of the counter of self-same respondent-Madireddy Santosh also on behalf of self-same other respondents came on record through implead petition in all the revisions including the counter of R.4-Khaja Moinddin in CRP No.2663 of 2015 which are similar as follows:-

The order passed by the Joint Collector, dt.11. 07. 2014 is based on the revenue record and there is no illegality committed by R.1. The R.2 initially passed order, dt. 03.02.1984 in file No.N/3043/1978 whereby 38-E certificates were granted after correction of the records as contemplated under Rule 3 (2) of the Rules, 1956. Since the villagers of Koheda village have brought to the notice of the R.2 with regard to incorrect entries in the tenancy records and after correction of the final tenancy record patta certificates were granted under Section 38-E of the Tenancy Act. The R.1 has issued a clarification vide letter No.B1/14848/75, dt.29.07.1979 to build up a register after careful enquiry as per physical possession and to correct the tenancy record of

Koheda Village. As per said guidelines issued by the R.1, the Tahsildar has conducted a local enquiry and prepared the tenancy register as per the physical possession of the PTs. Thereafter no objections were received on the register prepared by the Tahasildar, Hayatnagar and hence the said record prepared by the Tahasildar showing the exact survey numbers, extents on which the PTs were in actual possession and the persons who were in actual possession have also accepted the correction register prepared by the Tahasildar in toto. Therefore the respondent No.2 has ordered under rule 3 (2) of the AP (Telangana area) Tenancy Records (Correction Rules) 1956 to correct the tenancy record of Koheda Village and accordingly a list was prepared whereby the person shown there under have been declared as the protected tenants under Section 34 of the AP (Telangana area) Tenancy Records (Correction Rules) 1956. A perusal of the said register clearly shows that at Sl. No .3 5 , 36, 3 8 , 39, 40, 4 1, 4 2 the persons shown therein were declared as protected tenants being in possession of land bearing survey No.175 totally admeasuring Ac.50.02Gts.

Sl. No.	Name of the PT	Survey No.	Extent
			Ac. Gts .,
1.	Kandala Bal Reddy	155	4-10
		155/2	1-00
2.	Kandala Narsimha Reddy	155	4-20
		153/ 2	1-00
3.	Kandala Yadi Reddy	175	4-05
4.	Kandala Anasuya	176/ 4	7-0 0
		176/3	8-10
5.	Kandala Bakka Reddy	175	1-25
		176/ 2	1-04
		176 / 3	2-21
6.	Kandala Krishna Reddy	175	1-25

		176 / 3	2-21
		176 / 2	1-04
7.	Kandala Narsimha Reddy	175	1-20
		176 / 3	1-04
		176 / 2	2-21
8.	Kandala Mohan Reddy	176 / 4	2-06
9.	Kandala Ranga Reddy	176 / 4	2-06

Similarly the R.4 whose name is shown at Sl.No.61 and 59 was shown as PT in respect of land bearing Sy.Nos.132 admeasuring Ac.9.04Gts., and Sy.No.144 admeasuring Ac.3.17Gts., and so also their brothers shown at Sl.No.62, 64, 65, 66 totally admeasuring Ac.74.26 Gts., In nutshell there was only exchange of lands due to possession problem and there is no cancellation of name of PTs.

Sl.No.	Name of the PT	Sy.No.	Extent Ac.Gts.
1	Syed Abdul Ahmmed	109	3-10
		134	1-01
		135	1-00
		136	1-34
		137	3-07
		138	2-20
2	Syed Khaja Muniuddin	132	9-04
		144	3-17
3	Syed Mahamood	131	6-20
		140	2-30
		141	3-33
4	Syed Nabi	131	5-12
		140	2-30
		141	4-00
		144	5-25

5	Syed Ziannulladdin	131	4-36
		140	1-24
		141	1-04
		144	2-12
6	Syed Abdul Aziz	109	3-09
		133	2-05
		137	3-08

7-a). The R.2 after getting the report from the Tahsildar has corrected the names of the persons who were in actual physical possession and accordingly declared them as PTs which is permissible under Rule 3(2) of the Rules, 1956. Consequently the names of the petitioners and the R.4 and his family members were deleted from the respective survey numbers in which neither the petitioners nor this respondent and his brothers were in actual physical possession. Admittedly the persons who cultivated the lands were not reflected correctly in the records. Thereafter the 38-E certificates were granted after rectifying the P.T register entries in file No. N/3043/78 on 23/02/1984 for correction of PT list and also for grant the 38E certificate as per the correction records. The petitioners herein have never raised any objections as stated supra and in fact the petitioners thereafter after getting 38E certificate for corrected survey numbers have executed GPA, dt.01.10.1992 in favour of S.Raji Reddy registered as document No.945 of 1992 in the office of the Sub-Registrar, Hyderabad East in respect of land to an extent of Ac.27.25 Gts ., in survey No.172, 174, 175, 176/1, 176/2, 176/3 and 176/4 situated at Koheda Village. Similarly the petitioners have also executed another GPA, dt.01.10.1992 registered as document No.944 of 1992 in respect of land bearing Sy.No.175 admeasuring Ac.1.18Gts., in favour of same person to sell the land and accordingly the entire land has been sold to third parties. A perusal of the said two GPAs clearly shows the acquisition of title by the petitioners is only through File No.N/3043/78 dated 23/02/1984

issued by the R.2. When the petitioners have accepted the corrections and thereafter executed sale deed to third parties, the petitioner as PTs for the corrected survey number having obtained 38E certificate, now the petitioners cannot claim the wrong survey numbers which were shown in their names earlier in respect of old Sy.Nos.27/2 and 27/3 which have been shown as PTs as against the respondents names after corrections in the year 1984. In pursuance to the corrections of the protected tenancy register not only the petitioners, even the R.4 and his brothers also sold to third parties having obtained Gram panchayat layouts in the form of plots and hundreds of people purchased the plots as per the rectified survey numbers belonging to rectified names of PTs and owners now more than three decades back. The petitioners have taken advantage of the corrected survey numbers now cannot put forth any claim on the earlier incorrect protected tenancy survey numbers. For grant of 38E certificate, person should be in lawful possession of the land on the date of commencement of the Act 1950 to claim benefit under the Act. It is further submitted that the R.2 is empowered to carry out corrections in the tenancy register prepared under Sec.34 and 35 of the Rules, 1956 without any bar. When that is the case, the petitioners have no locus standi to question said proceedings issued by the R.2 in correcting the tenancy register. In fact the petitioners were not the PTs earlier to the correction of the protected tenancy register in respect of land bearing survey No.172 to 176 and once the corrections are made with the knowledge, consent and when no objections have been filed either by the petitioners or by the respondents and in fact all the parties have acted upon by executing the sale deeds in respect of corrected survey numbers, the petitioners have no locus standi to question said impugned proceedings. In view of preponderance of documentary evidence by way of registered sale deeds filed by the plot purchasers now, it is crystal clear that the subject lands for which the petitioners are claiming

tenancy rights are no more agricultural lands and in fact the provisions of the AP (Telangana area) Tenancy Act are not applicable in view of change of nature of the land as on the date of filing of the Revisions. As such the Revisions are not maintainable from any angle. The technical flaws on which the petitioners relied are not applicable to the facts of the present case as the names of the petitioners were not deleted from the protected tenancy register but only the survey numbers have been corrected over which the petitioners were in possession, therefore the plea of the petitioners that Section 19 of the Act is not followed is incorrect. When corrections are permissible under the law the question of surrender of tenancy rights are not applicable. It is not the case of the petitioners that they were in possession of land in survey No.172 to 176 prior to correction of tenancy register in the year 1984. The petitioners having taken advantage by selling the corrected survey numbers, having received sale consideration now cannot claim any right over the wrong survey numbers also. It is further submitted that the R.1 having verified all the records and having considered the stand taken by the petitioners and dismissed the appeal filed by them. In fact no notice of whatsoever nature was sent to these respondents when the appeal was filed before the R.1 and the petitioners have shown the address of the then counsel S.L.N. Chary, Advocate but in fact S.L.N. Chary, Advocate died on 12/07/2011 which shows malafides on the part of the petitioners. The petitioners without verifying or knowing fully well the correct address of respondents played mischief in showing the address of the respondents at the time of filing of the appeal before the R.1 as that of the counsel and subsequently even at the time of filing of the present CRP, the same address of the counsel is shown and in fact a paper publication was given and on knowing the same through one of the plot purchasers, he got filed vakalat in the month of April 2017. The petitioners have suppressed the fact of passing of the correction of PT

register in accordance with Rule 3(2) of the rules. It is submitted that though the 38E certificate was granted in favour of the respondents and also the petitioners herein in respect of corrected survey numbers and the passing of the said order was to the knowledge of the petitioners. The petitioners herein have also executed a registered GPA dt.1.10.1992 bearing document number 944/92 and 945/92 in respect of Sy.No.175, 175/3, 176/3, 176/2, 176/4 in favour of one S.Raji Reddy duly mentioning the acquisition of title to them of 38E certificate in file number N/3043/78, dt.23/2/1984 with the power to sell the subject land to 3rd parties and accordingly the said land was sold to 3rd parties in the form of Housing Plots and the petitioner's have ceased to be the owners even in respect of the 38E certificate lands. The petitioners being parties to the common proceedings before the R.1 had full knowledge about the issuance of proceedings and they ought to have filed appeals as contemplated u/sec.90 of the Act,1950 within 60 days as contemplated u/sec.93 of the Act, 1950. The petitioner's seems to have filed appeal under section 90 of the said Act after expiry of the limitation period. when the PT was not in possession of the lands for which his name was shown grant of 38E certificates in favour of the legal heirs of the original PT, the petitioners claims have been a sheer waste. It is also pertinent to mention here that Koheda village was ex-jagir and unsurveyed village and the tenancy record was prepared in the year 1951 as per the old record but later on the settlement record is made implemented and survey numbers have been changed. The protected tenants were in possession of the lands unmindful of the records of the PT register since then without seeking the relief for correction of the tenancy records, the provisional list has been prepared but it did not tally with the actual possession of the lands held by the tenants on the spot. Had the patta certificates been issued on the basis of incorrect provisional list, it would have been of no use to the PTs and also would have

created several complications if the lands were granted on the basis of wrong PT entries. It is also pertinent to mention here that, the survey numbers in the PT registers have been corrected as per the orders of the commission langndari (Land Revenue), dt.6.3.1955 as per the endorsement made by the then Tahsildar when the official had no power to convert the protected register. Not only the petitioners herein even the unofficial respondents got 38E certificates and which have been already sold in the form of Housing plots to 3rd parties by the petitioners and also by these respondents. Therefore now the question of adjustment of the names in correlation to their possession is not as per law. Moreover, once 38E certificates are granted, the same was not challenged within the time stipulated by the petitioners, all such certificates have become final. It is also pertinent to mention here that once the unofficial respondents already sold the lands in Sy.Nos.131,132,135 and 150 to the proposed implead petitioners and similarly the petitioners herein have also sold the land in Sy.Nos.172 to 176 from 1980 onwards to third parties, the provisions of the Act, 1950 are not applicable to the non-agricultural lands in Sy.Nos.131,132,135 and 136 as the same consists of hundreds of plots of which some of the sale deeds are being filed. Hence, to dismiss the Revisions.

8). The averments in the reply affidavit filed by the revision petitioners to the counter of the R.4-Kandada Bakka Reddy-1st petitioner in CRP No.2663 of 2015 also on behalf of the R.2 to R.6 shows that the allegations and contentions made therein are totally false and misconceived and the implead petition is in abuse of process of law and the claim is unsubstantiated and unfounded in law. It is further submitted that the grandfather of the Revision Petitioners was the owner of Ac.1.00gts in Sy.No.135 (Old Sy.No.27/2), Ac.1.34gts in Sy.No.136, Ac.10.28gts in Sy.No.131 (Old Sy.No.27/3), Ac.17.28gts. in Sy.No.132, Ac.20.14 gts. in Sy.No.150 and the revenue was also paid to the Government i.e. Wasool Baqui and the name

was reflected in the revenue records as a permanent PT pertaining to the land in Sy.Nos.27/2 & 27/3(old) and also in various other revenue records and the specific averments in letter No.B1/14848/75, dt.29.07.1979 is untenable and baseless as neither the respondents herein nor the implead petitioners filed the referred document which is sought to be relied upon for adjudication of the above Revision. The Tahasildar conducted the local enquiry and prepared the tenancy register as per the physical possession of the PT, as there is no record or document authenticating or confirming the same. Wasool Baqui refers to the new survey numbers corresponding with the old survey numbers which shows that the grandfather of the petitioner has been in possession and enjoyment of the same land all through his life and has been recorded as a PT. The averment that there was only exchange of land due to possession problem and after an enquiry was conducted, the same was rectified as no objections were received is wholly without any basis and any material proof and is concocted only for the purpose of lis as the original PT nor the petitioners herein were put on notice and furthermore the R.4 nowhere mentions about the old survey numbers which corresponds to the new survey numbers which have been rectified following the alleged local enquiry except for vaguely tabulating different survey numbers and stating that the petitioners and respondent were in possession of the same. The averment that for grant of PT rights, the person should have cultivated the particular land and for the same, the petitioners name is not recorded as PT is denied as false and concocted. It is submitted that admittedly the PT Register shows that Kandada Yellaiah, the grandfather of the petitioner and one Thati Chettu Devaiah as the original PTs until it was rounded up at the instance of the respondents which clearly shows the fact that the petitioners grandfather and after his demise, the petitioners herein were cultivating the subject land basing on which the grandfather was recorded as PT. The same is further

clarified by an endorsement of the Tahasildar which clearly in unambiguous terms states that Kandada Yellaiah and Thati Cyhettu Devaiah shall continue to remain PTs of other Sy.Nos.27/2 and 27/3 and as such the averment that the petitioners never cultivated the subject land is false without any substance. The Tahasildar corrected the names of persons who were in possession and declared them as PT for which the petitioners never raised an objection is totally false and untenable. The orders passed vide Lr.No.61/1/LRR/77, dt.15.02.1977 were challenged as being illegal and void. The Revision Petitioners also appealed before the revenue authorities to set aside the impugned Protected Tenancy certificates issued vide proceedings No.N/3043/1978, dated 23.02.1984. The then Joint Collector, R.R. District passed common order dated 11.07.2014 in File No.F2/5472/1993 against Khaja Moinuddin, File No.F2/5473/1993, filed against Syed Zainulabuddin, F2/ 5474/1993 filed against Syed Mahmood on his LRs, F2/5475/1993, filed against Syed Ghani Miyan and others, F2/5476/1993 filed against Syed Abdul Hameed, rejecting the claim of the Revision Petitioners. On that the revision petitioners impugned said orders in C.R.P.No.1552 and 1544 of 2015 in which the High Court was pleased to grant Status-quo orders, dt.24.04.2015 in File No.F2/5475/1993 and F2/5476/1993 and said Revisions are pending adjudication. This Court in other two Files impugned in CRP.Nos. 4444 and 4447 of 2015 suspended the operation of the said order. There were no corrections undertaken in the P.T.Register after making the final entries in 1950 and thereafter clarifications were sought for, and one such clarification was issued by the Lagandari Commissioner vide proceedings,dt.02.04.1955, which details that the names of Kandada Yellaiah and Thatichettu Devaiah will continue as PTs in Sy.Nos.27/2 and 27/3. Assuming but not admitting that an exercise of correction was undertaken without any notice to the PTs or his legal heirs, the averment that PT should be in possession of the land for grant

of Section 38-E Certificate is untenable. Since pursuant to the amendment of Act 2/1979, possession is not a condition precedent. Section 38-E categorically provides the procedure to get back possession with the confirmation of Section 38-E certificate. The petitioners herein are the legal successors of the PT and any alleged correction or alteration without putting them on notice is illegal and without any authority of law and in violation of provisions of the Act and principles of natural justice. It is once again reiterated that the alleged enquiry and correction of records did not take place and assuming the same was conducted, it was done without issuing any notice whatsoever to the PT or his legal heirs. As per the revenue records, the grandfather of the petitioners was recorded as the PT and as such if any proceedings issued affecting the rights of the PT, the same can be questioned by his legal heirs and that it is well settled practice and procedure that any order passed by a Quasi-Judicial Authority can be tested by the High Court in a Revision Petition in view of the powers granted under the Constitution. Since the subject land for all purposes is recorded as agriculture in nature, as such, the averments in para-7 are denied. In spite of regular notice vide RPAD and newspaper publication vide substituted service in the years 2003, 2006, 2014 and 2017 and the R.4 failed to appear and contest the proceedings before the Joint Collector during both enquires, and thus, the claim of the R.4 is not maintainable and untenable and the averment that the appeal before the R.1 and present CRP is filed without notice to them is without any basis. The averment that the subject lands were converted into non-agriculture divided into plots and sold to third parties is denied as being untenable, false, and baseless and through the same plot, purchaser came to know about the filing of the present CRP is also denied as neither the Gram Panchayat of Koheda village nor the erstwhile HMC or the current HMDA permitted the layout, and

that the possession is continuing with the Revisions Petitioners. Hence, to allow the revisions.

9. The common written submissions in all the Revisions by the Revision Petitioners are:-

a) The above CRPs are filed u/sec.91 of the Act, 1950 aggrieved by the common order passed by the Joint Collector, the R.1 herein in Case No.F2/5472/1993& batch dated 11.07.2014. The petitioners 1 to 5 are grandsons of one Sri Kandada Yellaiah whereas, the petitioner No.6 is the son of the said Kandada Yellaiah.

Old Sy.No.	Corresponding New	Extent in Ac.Gts.
27/2	135	1-00
	136	1-34
27/3	131	10-28
	132	17-28
	150	20-14

9-b) The Lagandari Record dt.14.03.1955 reflects the name of Kandada Yellaiah as the PT in respect of Old Sy.Nos.27/2 and 27/3, and the same was acknowledged by MRO/Tahasildar of Hayathnagar Mandal, Ranga Reddy District Vide proceedings,dt.02.04.1955. Unofficial respondents are the sons of Syed Nabi and grandsons of Syed Ameer Ali. Syed Nabi and Ameer Ali are recorded as PTs in old Sy.Nos.27/1 (After rounding-up), 27/4, 27/5, 27/6 and 27/7. Late Sri.KandadaYellaiah never surrendered his tenancy, and after his death, the petitioners succeeded as the PTs u/sec.40 of the Act, 1950. The name of Kandada Yellaiah is reflected in the following Revenue Records:-

- (i) PTs Register of Koheda Village of the year 1950,
- (ii) Wasool Baqui,
- (iii) Judgment of the Commissioner of Lagandari dated 14.03.1955,

(iv) Final Agricultural Tenancy Record.

The un-official Respondents i.e., the sons and grandsons of Syed Nabi and Syed Ameer Ali do not have any claim over land covered by Sy.No.27/2 (Old) corresponding to new Sy.Nos. 135 & 136 and Sy.No.27/3 (Old) corresponding to new Sy.Nos. 132, 131 &150, as the respondents are not the PTs. The aforesaid un-official respondents obtained Section 38-E certificate in respect of Sy.Nos.27/2(Old) corresponding to new Sy.Nos. 135 & 136 and Sy.No.27/3 (Old) corresponding to new Sy.Nos. 132, 131 &150 supra of which admittedly Kandada Yellaiah is the PT. The Respondents are neither the PTs of the subject property nor entitled for any certificate more particularly u/sec.38-E of the Act, 1950, but they were issued the Protected Tenancy by the RDO, Hyderabad East vide order, dt.23.02.1984, without issuing notice to the Petitioners and not following the procedure mandated u/s 35 of the Act, 1950 and Rules 3 & 4 of Rules, 1951. As already stated the two old Sy.Nos.27/2 and 27/3 indicate Kandada Yellaiah and Sri.Thatichetu Devaiah as the recorded PTs and likewise, Syed Nabi and Ameer Ali are the recorded PTs of other old Sy.No.27/1 (after rounding up), 27/4, 27/5, 27/6, and 27/7. The proceedings of Land Reforms Tribunal are indicating the names of Kandada Yellaiah and his legal heirs, containing detailed enquiry of the subject survey numbers. In the year 1993, the petitioners upon discovering the illegal mutation of the names of the R.3 to R.7 as the PTs, while granting the Section 38-E certificate to the R.3 to 7, filed Appeal before the Joint Collector impugning the illegal mutation of the names of the R.3 to 7 as the PTs that no notice has been given to the petitioners, and no procedure was followed while deleting their names as PTs. The Joint Collector, Ranga Reddy by order, dt.15.02.2005 dismissed aforesaid Appeal Case No.F2/5472/1993 & Batch filed by the petitioners on the grounds of limitation, also holding the same without any merits. The petitioners filed CRP Nos.5071 of 2007 u/sec.91 of the Act, 1950

before this Court aggrieved by the above said order, dt.15.02.2005. This Court allowed CRP 5071 of 2007 vide order,dt.02.11.2007 holding that:-

“Having regard to the grounds urged, which go to the root of the matter, this Court gave a direction to the learned Assistant Government Pleader for Revenue to produce the file from the office of the Joint Collector. The file is produced today. A perusal of the same would show that the Joint Collector, who heard the matter reserved for orders on 06.04.2002. Thereafter another Joint Collector again reserved the matter on 21.03.2003 and passed final orders on 15.02.2005. When the new Joint Collector took over charge in the place of previous officer, no notice was given reopening the matter and without hearing the petitioners, the impugned order came to be passed. This limited ground would itself be sufficient to suspend the appeal. In addition to this, third respondent filed a counter- affidavit. It is not specifically denied that the Joint Collector, who took charge after transfer of the previous officer, did not give any notice to the petitioners before passing the final order.

In the result, for the above reason, without expressing any opinion on the merits of the case, the impugned order dated 15.02.2005 insofar as case No.F2/5476/1993 is set aside and the matter is remanded to the Joint Collector, Ranga Reddy District, to consider the appeal of the third respondent after giving notice to the petitioners as well as third respondent herein”.

By similar orders, CRP.No.2171 of 2009, dt.27.04.2009, CRP.No.3055 of 2010 dated 06.07.2010, CRP.No.2174 of 2010 dated 27.04.2009, CRP.No.206 of 2011, dt.21.01.2011 were remanded to the Joint Collector for fresh consideration according to law after setting aside the order, dt.15.02.2005. The Joint Collector issued notices to the petitioners and respondents in compliance with the directions of this Court. The un-official Respondents in the appeals did not appear before the Joint collector in spite of issuing notices through paper publication published in Telugu daily 'Sakshi' in its issue of 29.02.2012 even though sufficient opportunity was given adjourning case from time to time, the un-official respondents failed to appear. The petitioners filed their written arguments and the matter was heard and reserved for orders by the Joint Collector on 23.11.2013. After keeping the matter pending for 8 months, the Joint Collector dismissed the appeals by order, dt.11.07.2014 holding that, if the appellants have any objection they

ought to have filed the same before the RDO at the time of publication of provisional list and final list of protected tenancy.

9-c). It is further submitted that the Joint Collector having held as follows:-

“A certified copy of the extract of P.T. Register of Koheda Village for the year 1950 relating to Sy.No.27/1 to 27/7 issued by the office of the M.R.O. Hayathnagar on 26.02.1993 available in the file has been perused. It reveals that in respect of Sy.No.27/1 and 27/2 (old Sy.Nos) the names of Kandada Yellaiah & That Chettu Devaiah have been rounded up in Col.No.9 meant for P.T. Against Sy.No.27/3 & 27/4 the said names of Kandadi Yellaiah & Thati Chettu Devaiah are found recorded in P.Ts column. Against Sy.Nos.27/5, 27/6, 27/7 the names of Syed Nabi S/o Syed Ameer Ali are found recorded in P.T. Column. In remarks column i.e. Col.No.15, Endorsement, dt.02.04.1955 (in Urdu) of the then Tahsildar is found. The said Endorsement says that to the extent of Sy.Nos.27/1, 27/4, 27/5, 27/6 & 27/7 the name of Syed Nabi S/O Syed Ameer Ali has been entered as P.T. as per the judgment of Commission Langandari (Land Revenue) dated 16.03.1995 included in file No.7/86 of 1955. In respect of the remaining Sy.Nos. ie. 27/2, 27/3 Kandana Yellaiah and that Chettu Devaiah will be continued as P.Ts as remained earlier. The claim of the appellants is that the names of Kandada Yellaiah and Thatichettu Devaiah are found recorded as P.Ts against Sy.Nos.27/2 & 27/3 and as per Wasool Baki Register Sy.No.27/2 old corresponding to New Sy.No.135 (1-00) 136 (1-34) whereas Sy.No.27/3 old corresponding to new Sy.Nos.131 (17.28) (10.28) & 150 (20.14) on which the appellants are entitled to 38F Certificate the recorded as that the Addl.Revenue Divisional Officer (Land Reforms Tribunal) Hyderabad East Division has submitted a report as per the possession of the P.Ts on their L.Rs on ground vide Ref.No.G/1/LRE/75 dated 15.02.1977.

erroneously dismissed the appeals.

9-d). Kandada Yellaiah never surrendered his tenancy as contemplated u/sec.19 of the Act, 1950 and as such after his demise, the petitioners succeeded as PTs u/sec.40 of the Act, 1950. The name of Kandada Yellaiah is reflected in all the Revenue Records namely PTs Register of Koheda Village of the year 1950, Wasool Baqui, Judgment of the Commissioner of Lagandari, dt.14.03.1955, Final Agricultural Tenancy Record and also the petitioners have been paying land revenue and etc. The un-official respondents who claim

through Syed Nabi and Ameer Ali admittedly were PTs of Sy.No.27/1 (after rounding-up), 27/4, 27/5, 27/6, and 27/7 and have no manner of right in respect of land covered by Sy.NO.27/2 and 27/3. It is fairly well settled that unless the Protected Tenancy is terminated in terms of provisions of Sec.19 of the Act,1950, the tenancy subsists and there is no record to show that Kandada Yellaiah ceased to be a PT. It is further submitted that in B.Bal Reddy v. Teegala Narayana Reddy &Ors(2016 SCCOnline 813), the Apex Court held as “It is well settled that the interest of a PT continues to be operative and subsisting so long as 'protected tenancy' is not validly terminated. Even if such PT has lost possession of the land in question, that by itself does not terminate the 'protected tenancy.’” The un-official Respondents never appeared nor contested the matter before the Joint Collector. Even though notices were served through paper publication, the respondents never appeared. Therefore, the 38-E certificate issued in favour of the respondents in respect of Sy.Nos. 135, 136, 131, 132 and 150 admeasuring extents Ac.1-00, Ac.1-34, Ac.10-28, Ac.17-28, Ac.20-14 gts respectively be set aside and consequent directions to R.1-Joint Collector of Ranga Reddy, R.2-RDO and MRO to grant the Section 38-E Certificates to the petitioners and mutate their names in the revenue records.

10. From the rival contentions supra, the original questions that raise for consideration to decide the revisions commonly are:-

- a). Whether the persons by name Kandada Yellaiah and Thatichettu Devaiah, from whom the revision petitioners claim right of succession, being the unsuccessful appellants before the Joint Collector, who in 2014 confirmed the order of the RDO of 1984 in respect of correction of entries invoking Rules 3 to 5 of the Rules made under the Act and in issuance of P.T. certificates, were the original Protected Tenants for the lands in old Sy.Nos.27/2 and 3 which correspond to new S.Nos.135,136,131,132 and 150 and also confirmed by the orders of the Lagandari Commissioner in 1955, besides from entries in Wasool Baki and from Land Reforms Tribunal proceedings etc., respectively and if so, there is no right of claim over the above to the original unofficial respondents in getting P.T. certificates as

legal heirs of Syed Nabi and Syed Ameer Ali from whom the implead respondents claim as bona fide purchasers for value with improvements and constructions made for they are the Protected Tenants only for the other lands in Old Sy.Nos.27/1,4,5,6 and 7?

b). If so, whether the original P.T. rights extinguish without surrender as per law and actual physical possession of P.Ts. is mandatory under the Act and amended Act, and the revisions impugned proceedings of RDO and confirmed orders of the Joint Collector including on ground of delay in filing appeals are unsustainable and liable to be set aside?

c) To what relief?

11). While deciding the above points for consideration, it is relevant to refer some of the relevant principles and propositions.

11(a). 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.]”

11-(b). “Section 19 with the title ‘Termination of tenancy’ reads as follows:

(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 subsection 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.

11-(c). Section 32 with the title 'Procedure of taking possession reads as follows:

(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.

11-(d). Section 34 with the title 'Protected tenants' reads as follows:-

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

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

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

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

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

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

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

Provided further that where the landholder is a person permanently incapable of cultivating the land by reason of mental disability the tenant shall not be deemed to be a protected tenant if before the expiry of one year from the death of the landholder, 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).

11-(e). Section 35 as to the - Decision on claims reads as follows:-

(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.

11-(f). Section 36 with the title 'Recovery of possession by protected tenant' reads as follows:-

(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.

11-(g). Section 37 as to 'Persons not entitled under Section 34 deemed in certain circumstances to be protected tenants reads as follows:-

(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.

11-(g)(i). Section 37A as to 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, reads as follows:-

[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.]

11-(h). Section 38 as to Right of protected tenant to purchase land reads as follows:-

(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 subsection (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.

11-(h)(i). Section 38A as to Procedure when reasonable price is agreed to between the landholder and protected tenant reads that:-

If in respect of a land held by a protected tenant the landholder 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.

11-(h)(ii). Section 38B as to Procedure when landholder agrees to relinquish his rights in favour of the protected tenant reads that:

If in respect of a land held by a protected tenant, the landholder 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.

11-(h)(iii). Section 38C as to Minimum holding in case of sale reads that :-

(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].

11-(h)(iv). Section 38D as to Procedure when landholder intends to sell land to a protected tenant reads that:-

(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.

11-(h)(v). Section 38E as to Ownership of lands held by protected tenants to stand transferred to them from a notified date reads that:-

(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"].

11-(i). Section 40 as to Rights of protected tenant heritable reads that:-

(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].”

11-(j). Rules 3 to 5 of the Rules read as follows:-

3. Application for declaration:- An application by the landholder for a declaration under Section 5 of the Act shall be in Form I and shall bear a court fee stamp of the value of Re. 1.

4. A copy to be communicated to and a statement to be filed to the other party:- On receipt of an application filed under Rule 3 the Tahsildar shall send a copy of such application to each of the persons against whom a declaration under Section 5 is sought and shall call

upon every such person to file in writing on or before a date specified by him or within such further time as may be extended by the Tahsildar for sufficient reasons to be recorded in writing a statement showing the grounds, if any, as to why such declaration should not be made.

5. Enquiry:- On receipt of the statement under Rule 4, the Tahsildar shall issue notices in Form II to both the parties intimating the time, date and place at which he proposes to enquire into such an application. On the date so appointed or any other date to which the enquiry may be adjourned by him the Tahsildar shall, after hearing the parties and their witnesses, if any present, and examining the documents, if any, filed by either party and after taking such further evidence as he may consider necessary, pass such orders as he deems proper.

Forms I to X prescribed are relevant to the above rules for making application for declaration and for sending a copy of such application by the Tahasildar to the persons against whom declaration sought and for enquiry by the Tahsildar.

12. Coming to the propositions relevant on the scope of the provisions:-

12(A). In **Nerella Janaiah Vs. Bairam Saiga**¹, the division Bench of this Court referring to Section 38-E of the Act observed that the statutory benefit of the protected tenancy rights applies only to the protected tenant in lawful possession and it is difficult to premise that who were dispossessed 4 years prior to the notification made under Section 38-E of the Act was in lawful possession of the lands to claim benefit. It referred the wording of Section 38-E running with non-absentee clause of notwithstanding anything in this chapter or any other law for the time being force on the expression holding for not defined in the Act 1950 and Section 2(z) says words and expressions used in this Act but not defined therein shall have the meaning assigned to them in the Hyderabad Land Revenue Act, where the definition in Section 2(6) of holding says, to hold land or to be a landholder or holder of land, means to be

¹ 1959 ALT 924

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

12(B). In **Kothakapu Sai Reddy Vs. District Social Welfare Officer, Land Acquisition, Hyderabad** in CCCA.No.143 of 1976 dated 25.10.1977 by Division Bench of this Court, in the appeal against the order dated 25.04.1975 in O.P.No.19 of 1973 passed by Additional Chief Judge, City Civil Court, Hyderabad, on the issue in relation to land in an extent of Ac.20.36 gts of Khanajiguda, hamlet of Alwal Village, Hyderabad, acquired by the Government as per Section 4(1) notification dated 13.01.1972 covered by award dated 04.02.1972, possession taken on 10.02.1972 and the compensation is paid to 9th respondent owner of the land despite telegraphic notice issued by claimant Nos.1 to 8 on 13.02.1972 alleging they were the protected tenants of the land under the Act, on the question referred to civil Court of their entitlement to compensation or not under Section 30 of land acquisition Act, the learned Additional Chief Judge held the claimant Nos.1 to 8 recorded as protected tenants in the year 1950-51 only and not thereafter in possession including by date of Section 4(1) notification of Land Acquisition Act and thereby not entitled to compensation by referring to Section 40(4) of the Act and the decision in **Nerella Janiah** supra. That is impugned before the High Court,

where it is shown the certificate extracts of pahani patraks for the years 1962 & 1963 show Chakula Narsimhulu etc., cultivated the land and possessed other rights and the pahani patrak of the year 1965-1974 show the 9th claimant original pattadar cultivated lands and pahani patraks of 1958-59 shows among the predecessors of claimants, claimant K. Narasaiah shown as having other rights in the land and actual cultivators are Chakula Narasimhulu etc., and the pahani patraks of 1967 for some years show K. Sai Reddy 1st claimant as person having other rights and actual cultivators are Chakula Narasimhulu etc., from which it is clear of claimant Nos.1 to 8 though recorded as protected tenants were never in actual possession after 1950-51 including by the time the land acquired on 13.01.1972 by Section 4(1) notification and from explanation to Section 38-E provides protected tenant who has been dispossessed otherwise than as provided in Section 32, shall be deemed to be in possession of the land on the date of the notification and shall be entitled to be restored to possession on his application and by the time the notification under Section 38-E(1) issued on 01.01.1973, the proceedings of land acquisition Act were completed and land vested in Government, Section 38-E(1) notification dated 01.01.1973 not issued prior to the date of Section 4(1) LA Act dated 13.01.1972 and Section 38-E(1) notification dated 01.01.1973 since subsequent in point of time is of no avail to the claimants as protected tenants to share compensation under LA Act and coming to Section 40(4) of the Act of 60% of compensation claim arises if the acquired land is held by the protected tenants on the date of Section 4(1) notification of LA Act and as per Section 2(z) of the Act r/w 2(6) of AP (TA) Land Revenue Act and as held in **Nerella Janiah** supra, the benefit of Section 38-E could only accrue to a person who is lawfully in possession of the land as protected tenant and not to the person who was dispossessed. The land owner, 9th claimant on the application, the Tahsildar granted permission under Section 47 & 48 of the Act, which permission is granted after notice to claimant Nos.1 to 8 and the Tahsildar order not set aside by the superior authority and it is not open to claimant Nos.1 to 8 to question the purchase by

9th claimant from the original land holder inamdar and the original landlords did not own more than 2 family holdings and the claimant No.9 own less than 3 family holdings and claimant Nos.1 to 8 as LR's of the protected tenant if at all wanted to purchase could have made offer at that time and not done so and allowed the order of Tahsildar became final cannot question the compensation paid to the 9th claimant by the LAO upheld by the civil Court in Section 30 reference. In fact the expressions in **Kothakapu Sai Reddy supra** placed reliance upon the earlier division bench expression in **Nerella Janiah supra** of to hold or hold land by protected tenant to mean lawful possession to mean actual physical possession and not of who were dispossessed or surrendered as the case may be.

12(C). In fact, in another Division Bench of this Court in **Chimmapudi Subrahmanyam Vs. Gadipalli Narasimhaiah**² dated 10.09.1962, the same issue since arisen with reference to Section 5 & 32 and Section 38-E of the Act, it was held that Section 32 of the Act is not applicable to a case where possession taken through Court, from the letter executed relinquishing their interest over properties, once it is voluntary surrendered without any resistance and even voluntary surrender without process of Court to bind, thereby cannot claim the benefits of the Act as protected tenant.

12(D). In fact the definitions of 'held' and 'hold' or 'holds' came for consideration before the full bench of this Court in **Sada Vs. The Tahsildar, Uttnoor, Adilabad**³, where Sections 5, 19, 27, 28, 38, 44, 34, 37, 37-A & 38-E of the Act by amended Act Nos.3/54, 2/79 & 15/71 and AP (TA) Transfer of Ownership Rules 1973 and AP (TA) Tenancy and Agricultural Lands Rules 1951 are referred and held, by referring to **Nerella Janiah supra** and several other expressions particularly at Para 25 referring to amendment in 1979 to Section 38-E(2), that the power of the Collector suo motu at any time to hold

² LAWS(APH)-1962-9-6

³ AIR 1988 AP 77

an enquiry under Section 19 with a view to ascertain genuineness of surrender of right made by protected tenant under Section 19(1) of the Act, provided there be no order adversely affecting any person shall be passed, unless such person has had an opportunity of making his representation thereto. The Rules issued in G.O.Ms.No.2064 Rev.(F) dt.7-5-80 enables the Tahsildar to inquire and restore possession under the proviso to Section 38E(2) and the amendments introduced in 1979 is remedying the defects pointed out in **Chinnaboini Narsaiah v. Tahsildar, Mahaboobabad, Warangal District**⁴ which upheld the constitutional validity of amended Act No.2/79 saying Section 38-E(2) introduced on 11-1-1979 is retrospective and enable restoration of possession by the Tahsildar to the protected tenant who became owner, either before 11-1-1979 or thereafter; and once the ownership certificate was issued to the protected tenant, it was conclusive evidence of such ownership and it should not be challenged 'at the stage of delivery of possession' in the inquiry under the proviso to Section 38-E(2) read with the Rules made in G.O.Ms.No.2064 Rev.(F) dt.7-5-1980 or in a Civil Suit, because of the bar in Section 19 of the Act.

12(D)(i). It was further held in **Sada** supra that it was not necessary that the protected tenant should have been actually in possession on the date of notification under Section 38-E(1) and the words 'held' and 'holding' cannot be construed as referable to actual possession, though possession cannot be restored without notice to persons in possession for providing an opportunity to make their representations. In answering the reference by the Full Bench of any conflict between **Narsaiah's** case and **Chenneiah's** case, the two earlier expressions one rendered before amended Act 2 of 1979 and one rendered after Act 2 of 1979. On the first point whether a protected tenant must have been in physical possession on the date of the notification issued by the Government under Section 38-E(1) (i.e., 1-1-1973) for becoming owner of the

⁴ (1979) I Andh WR (HC) 23

property and for obtaining the ownership certificate. In **Narsaiah's** case supra opined that the protected tenant must be in physical possession on the date of notification, while in **Chennaiah's** case the contrary view was taken. Of course, the amending Act 2 of 1979 did not make any change in the statute so far as Section 38-E(1) or its proviso or Explanation concerned. It was observed, if the Legislature wanted that protected tenants must be holding the land physically on the date specified in the notification issued under Section 38-E(1), it would have made it a specific condition, for no such condition imposed from its wording and it is also clear from the scheme of the Act. From form 5 and Section 38-E that Protected tenants who were finally declared to be 'protected tenants' and included in the Register prepared for that purpose and for whom protected tenancy certificates have been issued, that ownership rights are envisaged in Section 38-E(1), of course, subject to the limitation with regard to extent of holdings as specified in Section 38(7) and to the proviso to Section 38-E(1). Any ambiguity in this regard is clearly removed by explanation to Section 38-E(1) by Act 15 of 1971. The Supreme Court in **State of Andhra Pradesh Vs. Mohd. Ashrafuddin**, interpreted the words 'held and 'holding' under Section 3(1) of the A.P. Land Reforms (Ceilings on Agricultural Holdings) Act, 1973 of 'held' connotes both ownership and possession and not possible to interpret the word 'held' only in the sense of possession. It is observed therefrom at Para 31 of the full bench judgment that a person 'holds' the land as protected tenant, if he is still a 'protected tenant' on the notified date, though out of possession. It referred of arguments placed reliance on **Nerella Janaiah** supra and observed at Para 33 (the full bench judgment) that the learned Judges in **Nerella Janaiah** unfortunately did not give any effect to the words actual or not available in the definition. Once the explanation to Section 38-E by amended Act 15 of 1971, introduced deeming a person out of possession as in possession, unless evicted under Section 32, the said decision of the Division Bench in **Nerella Janaiah** ceases to be of any use to

the landholders. It is also observed in Para 34, referring to **Bandi Krishna Murthy v. Pasupuleti Venkatesam**⁵, of the decision arose under Section 37-A of the Act, amended in 1955 and the language of which is different from the language in Section 38-E(1) with explanation covered by amended Act 15 of 1971 and after the introduction of the 'deeming' provision thereunder in the first part of the Explanation, this decision is also held of no use to the landholder's case. It is thereby overruled **Narsaiah's** case and approved the view expressed in **Chennaiah's** case by holding that for the vesting of the ownership of land 'held' by a protected tenant under Section 38E(1), it is not necessary that the protected tenant should have been in physical possession on the date of notification and it is sufficient if he continued to hold the status of a 'protected tenant' as on the notified date even if not in physical possession to satisfy the requirements of Section 32(7) of the Act, which is also subject to the proviso to Section 38-E(1). As held in **Chennaiah's** case, restoration of possession to the protected tenant under Section 38-E(1) is not a condition precedent for any action under Section 38-E(2) for initiating or granting ownership certificate by overruling **Narasaiah** supra in this regard. It is also held that on the scope of enquiry under Section 38-E(2) and as to the effect of certificate issued thereunder that all objections to the very grant of certificate must be raised before it is granted or by any appeal or revision as the case may be and later cannot be permitted to raise at the stage of delivery proceedings under Section 38-E(2) proviso to the amended Act. It is observed that in case where the landholders have sold the property, it is to be noted that the sales offend the statute, which requires the offer of sale to be made to the protected tenant.

12(E). Coming to the power including under Section 38(5) by the Collector in use of the words at any time notwithstanding in Section 19 or Section 38-E for deciding genuineness of any surrender for the purpose of

⁵ (1961) 1 Andh WR 413

effecting of transfer of ownership before the amended Act 3/1954 dated 04.02.1954 even oral surrender voluntarily by a surrender was valid if made earlier to it as held in **Seetharamamma v. Badnath Herija**⁶, however after 04.02.1954 it must satisfy the mandatory requirements as held in **Venkanna Vs. Buchamma**⁷.

12(F). In fact a learned Single Judge of this Court in CRP.No.4066 of 1997 subsequent to that full bench expression in **Sada** supra where **Nerella Janaiah** referred and overruled, came again for consideration from the arguments raised against the correctness of the full bench expression in the CRP filed by 2 protected tenants for restoration of possession under Section 32(1) of the Act by the LR's of the protected tenant opposed by the land owners where the LR's of the protected tenant claim the land owner with the active support of one Madhava Reddy dispossessed them forcibly and their tenancy rights are still subsisting and third party rights created are not binding. The MRO held tenancy right of protected tenant not terminated thereby under Section 32(1) of the Act, the protected tenants are entitled for restoration of possession. The Joint Collector confirmed the same, against which that revision maintained. The learned single Judge in the revision referring to the Division Bench in **Nerella Janaiah** supra said a person who was dispossessed cannot be held to be in lawful possession of the land, whereas the full bench in **Sada** supra rendered adversely on **Nerella Janiah**, did not give effect to the word 'actual or not' available in the said decision and thereby judgment in **Nerella Janaiah** not correctly decided; however in **Sada** the observations made are by virtue of Section 38-E introduced by amended Act 15/1971 of a person out of possession is deemed to be in possession for purpose of granting of protected tenancy certificate. The grant of certificate under Section 38-E(1) is different from interpretation of the expression to hold the land under Section

⁶ 1959 Andh LT 650

⁷ (1971) 2 APLJ (HC) 266

40 of the Act, which should be in possession either actual or constructive of the protected tenant at the time of his death; while under Section 38-E, it is deemed possession and not either actual or constructive possession; to say in Section 38-E a legal fiction is created of person out of possession is deemed to have been in possession on the date of notification and under Section 2(z) of Hyderabad Land Revenue Act to 'hold' land means person out of possession cannot be treated as in lawful possession either actual or not and judgment in **Nerella Janaiah** as per the learned Single Judge is correctly decided and as to adverse comment made by the Full Bench in **Sada** supra against **Nerella Janaiah** and it is just and proper to place the matter before the Bench for consideration in directing the Registry to place the matter before the Hon'ble the Acting Chief Justice to refer to a Bench to consider the correctness of the decision in **Nerella Janaiah**. In fact there is nothing shown of any disposal of said reference and if so with what result if at all upheld **Nerella Janaiah**, that was held by subsequent full bench as not correct law even.

12(G). In **Ponnala Narsing Rao Vs. Nallolla Pantaiah And Others**⁸ referring to Section 2(r) of the Act in relation to the oral surrender theory propounded against the protected tenant by the land owners from entry in tenancy register showing the protected tenant all through recorded, khasra entry of 1954 shows the land owner to be in possession theory of oral surrender of protected tenancy rights prior to 1954 held cannot be believed. In answering the application under Section 32 of the Act by the protected tenant for possession that, though the same must be filed within the reasonable time, for in case of belated application opposite party must prove to have been adversely effected in showing any changed possession meantime for equities may have arisen in favour of alienation by changed position of spending of amounts and improvements made on land etc., which are to be pleaded and proved. The contention that application under Section 32 filed

⁸ 1998 (9) SCC 183

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

12(H). In **Boddam Narsimha Vs. Hasan Ali Khan (dead) by LR and Others⁹**, the Apex Court held that Section 38-E of the Act has been enacted for those protected tenants who are declared to be protected tenants and included in the register prepared for that purpose. A person becomes protected tenant when he is a holder on the dates and for the periods mentioned in Sections 35, 37 & 37-A. Once a persons becomes a protected tenant, he is entitled to an ownership certificate under Section 38-E. It is observed that, Bala died in 1975 claimed as protected, after his lifetime by his nephew concerned, neither he nor Lrs of Bala nor Bala prior to 01.01.1973 claimed as protected tenant, but for 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 invoked Section 37-A which came into force by amendment Act 1955, for more than 40 years it was stated word held in **Sada supra** of mere latches would not disentitle the tenant to the relief sought for by him

⁹ 2007 (1) ALD 101 (SC)

under the Act, so also the other expression in **Bahadur singh Vs. Shangara Singh**¹⁰ of accrued right in favour of the tenant by operation of law does not get defeated merely by omission to have their names recorded in the revenue records. The further observation by the Apex Court is that the Memo dated 11.9.2000 issued by the R.D.O. stating that the particulars of tenants who became protected tenants under Section 37-A was not available though the register contains particulars of 36 other villagers. Then the High Court should have directed the Tribunal to hold an enquiry and compile a register on the basis of the village record, since no person can be affected on account of omissions on the part of the Tribunal in complying with the statutory mandatory provisions of the Act. It is observed further by the Apex Court on the scope of Section 38-E of the Act that, said Section has been enacted for those protected tenants who are declared to be protected tenants and included in the Register prepared for that purpose. A person becomes a protected tenant when he is a holder on the dates or for the periods mentioned in Sections 35, 37 and 37-A. Once a person becomes a protected tenant, he is entitled to an Ownership Certificate under section 38- E. In the case of **Sada** (supra) the High Court held that a person "holds" the land as protected tenant if he is still a protected tenant on the notified date i.e., 1.1.1973, though out of possession. For the vesting of ownership of land held by a protected tenant under Section 38-E, it is not necessary that the protected tenant should be in physical possession on 1.1.1973. It is sufficient if he continues to hold the status of a protected tenant on the notified date, even if he is not in physical possession. The Act does not merely regulate the relationship of landlord and tenant, but deals with the alienation of agricultural land, and includes transfer of the land holders interest to the protected tenants. Therefore, the grant of pattedari (ownership rights) also finds place in the Act. The benefit of Section 38-E given to persons who hold the lands as protected tenants and who continue to hold the lands as protected tenants on 1.1.1973 and ownership

¹⁰ 1995 1 SCC 232

rights are conferred only upon persons who continue to be protected tenants as on 1.1.1973. They form a special class. In **Sada** (supra) it has been held that protected tenants are covered by Chapter IV of the Act. They fall under a limited category. They are referred to in Sections 34, 37 and 37-A introduced by Act No.3/56 and deals with a separate class of persons deemed to be protected tenants. This class of persons is different from the category of protected tenants who fall under Sections 34 and 37 respectively. Section 37-A refers to persons who are holders of the land at the commencement of Amending Act of 1955 (12.3.1956) and those persons were required to be tenants on 12.3.1956 and that they should continue to be tenants till 1.1.1973 and only such category of persons are entitled to Ownership Certificate under Section 38-E. In the present case, even for the sake of argument, if we were to proceed on the basis that Bala was a protected tenant on 12.3.1956, still Bala became a pattedar vide conveyance dated 23.11.1959, therefore, in any event, the assumed protected tenancy did not continue up to 1.1.1973. In our opinion, therefore, in any view of the matter, the appellant herein was not entitled to the Ownership Certificate under Section 38-E of the Act. Further, Section 38-E(2) read with the A. P. (T.A.) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 contemplates a full-fledged inquiry after notice to the landholders or after hearing objections of any other interested person (vide Rr. 4, 5). Once a certificate is issued, the same is, under Section 38E(2), 'conclusive evidence' of the ownership of the protected tenant, and cannot be defeated by the result of any inquiry under second part of the Explanation to S. 38- E. The inquiry under S. 38-E(2) read with the Rules of 1973 referred to above, is to be done by the Tribunal (the Revenue Divisional Officer) and obviously his decision to grant the ownership certificate will not and cannot be jeopardised by the result of any inquiry by a subordinate official like the Tahslidar, who deals with the granting of possession to a 'protected tenant.

12(I). In **State of Andhra Pradesh Vs. T. Yadagiri Reddy and Others**¹¹ on the Collectors suo motu powers of revision under Section 50-B(4) of the Act in use of the words 'at any time' observed that 25 years after certificate issued and the concerned lands converted and sold to approximately 1100 persons as residential plots, though no period of limitation prescribed, still the Collector on facts held would not be justified in initiating a suo motu action, which has to be within a reasonable time, though the words at any time are used in the provision. The other question arisen therein is lands were subjected to declaration under land reforms ceiling on agricultural holdings Act 1973, opportunity of hearing the protected tenant in possession in ceiling proceedings against landlords, for no notice issued to the respondents and ultimately ceiling case came to be decided against them and thereafter notice of surrender issued for the surplus lands to the tenant in possession as the Tribunals failed to give opportunity of hearing before passing adverse orders, appeal against the High Court's setting aside the order of the Tribunal dismissed by the Apex Court for no merits by confirming the High Court orders. It referred to the earlier expression of the Apex Court in **State of A.P. Vs. S. Vishwanatha Raju & Others**¹², where the Apex Court taken suo moto action, seeing that there was an attempt to take out substantial acreage of 900 acres of land out of the purview of the Ceiling Act by the device of agreements of sale and the concerned officers were negligent in not carrying out the orders of the authorities in revision because of fraud played. In **Ibrahimpatnam Taluk Vyavasaya Coolie Sangham Vs. K. Suresh Reddy and Others**¹³ it was observed in Para 9 on use of the words "at any time" in sub-Section (4) of Section 50-B of the Act that, those cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably and under the guise of "at any time", if suo moto power under sub-Section (4) of Section 50-B of

¹¹ 2008 16 SCC 299

¹² 1995 (3) SCC 327

¹³ 2003 (7) SCC 667

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

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

¹⁴ 2016 (6) ALD 7(SC)

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

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

The Civil Revision Petition is accordingly dismissed. No costs”

The respondents had also preferred Civil Revision Petition No. 4904 of 2006 against the order dated 22.07.2006, by which order granting restoration

was set aside, with observation that transaction of sale by the original land holders in favour of third parties of agricultural land under the holding of a Protected Tenant was contrary to provisions of Section 38-D of the Act and as such the appellate authority had rightly found that the present appellants had no locus standi in the matter. It was further observed that there was no evidence to show that the Protected Tenant had ever surrendered his protected tenancy or that he was evicted under Section 19 of the Act, as such the protected tenancy would continue despite the death of Protected Tenant and the rights in that behalf devolved on the successors, by placed reliance on the Full Bench judgment in **Sada v. Tehsildar of 1988**, of no limitation or adverse possession could be raised against the protected tenancy and the respondents being legal heirs and lineal blood descendants of the Protected Tenant, they were entitled to seek restoration of possession. Similar orders were passed restoring orders granting possession in respect of Civil Revision Petition Nos. 447 and 448 of 2007.

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

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

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

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. In answering the above points for consideration with reference to the above provisions and propositions with no need of repetition of the facts but for to discuss only with reference to the material facts, there is no much dispute with regard to the protected tenancy rights of Kandada Yellaiah and Thatichettu Devaiah, of whom Yellaiah was the grandfather of the revision petitioners 1 to 5 and father of revision petitioner No.6 and he was granted originally Section 38(E) certificate way back in the year 1951 and Wasool baki also reflects the revenue was paid to the Government as a PT. It also shows his name as P.T. in the judgment of the Commissioner of Lagandari(Land Revenue), dt.16.03.1955. It is a case of nobody among the respondents that they are claiming through said Kandada Yellaiah and Thatichettu Devaiah. It is not even a case of anybody among the respondents that said Kandada Yellaiah and Thatichettu Devaiah surrendered their protected tenancy rights legally. It is also not the case of any of the respondents that any of the petitioners are not legal heirs eligible for succession from any of the two persons by name Kandada Yellaiah and Thatichettu Devaiah, much less any of said legal heirs of them even surrendered their protected tenancy rights of succession.

14. The 1st respondent-Joint Collector thereby failed to answer how the then R.2-RDO can grant Section 38-E certificate in favour of the R.3-Syed Zainulabuddin on 03.02.1984 in respect of land in Sy.Nos.27/2 and 3 of Koheda village of about Ac.50.00gts, much less to correct the PT Register entries for such issuance, that too by ignoring the original P.T entry existing in favour of said Kandada Yellaiah and Thatichettu Devaiah in respect of said land in Sy.Nos.27/2 and 3 of Koheda village. The 1st respondent-Joint Collector also failed to appreciate the facts on record i.e. P.T. Record, Wasool Baki Register are crystal clear that the petitioners are entitled to the PTs as Legal heirs of said original PTs. Kandada Yellaiah and Thatichettu Devaiah. The 1st respondent-Joint Collector could not have relied on the so called report L.R.No.61/1/LRR/77, dt.15.02.1977 with provisional list that was published more than six years later on 10.02.1984, as to who are in physical possession of the subject land, rather to say who are entitled legally to possession. The 1st respondent-Joint Collector failed to appreciate the facts on record that there is no any service of notice and hearing of the revision petitioners-appellants or any other legal heirs of said original PTs. Kandada Yellaiah and Thatichettu Devaiah, before making the so called report L.R.No.61/1/LRR/77, dt.15.02.1977 with provisional list that was published more than six years later on 10.02.1984.

15. In fact considering the meaning and definitions of 'held' and 'hold' or 'holds' the full bench referred above of this Court in Sada supra, held that once the ownership certificate was issued to the protected tenant, it was conclusive evidence of such ownership and it should not be challenged 'at the stage of delivery of possession' in the inquiry under the proviso to Section 38-E(2) read with the Rules made in G.O.Ms.No.2064 Rev.(F) dt.7-5-1980 or in a Civil Suit, because of the bar in Section 19 of the Act. It was further held in Sada supra that it was not necessary that the protected tenant should

have been actually in possession on the date of notification under Section 38-E(1) and the words 'held' and 'holding' cannot be construed as referable to actual possession, though possession cannot be restored without notice to persons in possession for providing an opportunity to make their representations. It was also vividly observed in Sada supra that 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 at Para 31 of Sada supra 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, introduced deeming a person out of possession as in possession, unless evicted under Section 32, the said decision of the Division Bench in Nerella Janaiah ceases to be of any use to the landholders. It is also observed in Para 34, referring to Bandi Krishna Murthy supra of the decision arose under Section 37-A of the Act, amended in 1955 and the language of which is different from the language in Section 38-E(1) with explanation covered by amended Act 15 of 1971 and after the introduction of the 'deeming' provision thereunder in the first part of the Explanation, this decision is also held of no use to the landholder's case. It is thereby overruled Narsaiah's case and approved the view expressed in

Chennaiah's case by holding that for the vesting of the ownership of land 'held' by a protected tenant under Section 38E(1), it is not necessary that the protected tenant should have been in physical possession on the date of notification and it is sufficient if he continued to hold the status of a 'protected tenant' as on the notified date even if not in physical possession to satisfy the requirements of Section 32(7) of the Act, which is also subject to the proviso to Section 38-E(1). As held in Chennaiah's case, restoration of possession to the protected tenant under Section 38-E(1) is not a condition precedent for any action under Section 38-E(2) for initiating or granting ownership certificate by overruling Narasaiah supra in this regard. It is also held on the scope of enquiry under Section 38-E(2) and as to the effect of certificate issued thereunder that all objections to the very grant of certificate must be raised before it is granted or by any appeal or revision as the case may be and later cannot be permitted to raise at the stage of delivery proceedings under Section 38-E(2) proviso to the amended Act. It is observed that in case where the landholders have sold the property, it is to be noted that the sales offend the statute, which requires the offer of sale to be made to the protected tenant. Coming to the power including under Section 38(5) by the Collector in use of the words at any time notwithstanding in Section 19 or Section 38-E for deciding genuineness of any surrender for the purpose of effecting of transfer of ownership, after 04.02.1954 amendment, it must satisfy the mandatory requirements as held in Venkanna supra.

16. Once such is the clear legal position, when the petitioners as legal heirs of said Kandada Yellaiah that certain names were entered in the records behind their back and they came to know and therefrom filed the appeals to set aside the impugned P.T. certificates issued by the Tahasildar, dt.23.02.1984, it must be the duty of the Joint Collector in deciding the appeals with reference to the provisions and the full bench judgment in Sada

supra, rather mechanically dismissing the appeals by the common order, dt. 11.07.2014 in favour of the appeals respondents- Syed Zainulabedin, Khaja Moiddin, Syed Mahamud by Legal Representatives, Syed Ghani Miyan and others and Syed Abdul Hameed, despite earlier dismissal orders of the Joint Collector impugned in revisions were set-aside and remanded by the High Court for fresh determination on merits, needless to say the scope of enquiry as contemplated by the Rules 3-5 and with prescribed Form of Application as per the rules and under Section 35 and other provisions of the Act. The 1st respondent-Joint collector did not even consider the facts on record that the names of the petitioners appears rounded off and at the end of the PT record, there is an endorsement in the Urdu language by the Tahsildar without any valid reason, to enter the names of Syed Nabi s/o Syeed Ameer Ali etc., for the Sy.No.27/3-2 ignoring the previous Kouldhar Kandada Yellaiah and even according to that they are entitled as a PT in Sy.No.27/3-2(old), corresponding Sy.Nos.136,135,132, 150 and 131 at least this fact is not appreciated by the 1st respondent-Joint collector.

17. Once the original P.T. register entries are clear, there could be no change as held in Sada supra but for to enter any succession and alienations recognized by law. The order passed by the Joint Collector, dt. 11. 07. 2014 to confirm that of the RDO dt. 03.02.1984 in file No.N/3043/1978, cannot thereby ignore it and base for decision on any other revenue record and physical possession for correction of records. The 1st respondent-Joint collector did not even say any of the petitioners have accepted the corrections and thereafter executed sale deeds to third parties and if any from such contention of respondents it amounts to waiver for no valid surrender or extinguishment of rights in respect of old Sy.Nos.27/2 and 27/3.

18. No doubt so far as alienations by the respondents to third parties and any obtaining of layouts in the form of plots and introducing third party

interest with development of the lands and constructions if any concerned, the Apex Court in Ponnala Narsing Rao supra referring to Section 2(r) of the Act in relation to the oral surrender theory propounded against the protected tenant by the land owners from entry in tenancy register showing the protected tenant was recorded, even khasra entry of 1954 shows the land owner in possession disbelieved the theory of oral surrender of protected tenancy rights and consequently in answering the application under Section 32 of the Act by the protected tenant for possession that, though the same must be filed within the reasonable time, for in case of belated application, opposite party must prove to have been adversely effected in showing any changed possession meantime for equities may have arisen in favour of alienation by changed position of spending of amounts and improvements made on land etc., which are to be pleaded and proved. The contention that application under Section 32 filed after unreasonable delay should have been dismissed on that ground of delay only cannot be sustained on the facts of the case, for no such plea raised by the opposite party of from the belated application, their rights are adversely affected. It is observed in Para 3 of the judgment in Narsing Rao supra that though no express period of limitation is provided for filing application under Section 32 of the Act, such application has to be moved within reasonable time, because of such belated applications, the other side may stand adversely affected. It may have changed its position in the meantime. Equities may have arisen in his favour, he may have spent large amounts on land by improving it. But all these questions have to be pleaded and proved. In opposing the applications, for no such plea, it cannot be sustained so also for no plea of adverse possession put forward. Thus, mere delay is not a bar but for to consider the equities how to work out from third party interests created and improvements made etc., facts. In fact in Boddam Narsimha supra, the Apex Court clearly 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 of the Act. It is observed that, Bala died in 1975 claimed as protected tenant 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 invoked Section 37-A which came into force by amendment Act 1955, for more than 40 years. It was stated in Sada supra of mere latches would not disentitle the tenant to the relief sought for by him under the Act that accrued right in favour of the tenant by operation of law does not get defeated merely by omission to have their names recorded in the revenue records. Section 38-E(2) read with the A. P. (T.A.) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 contemplates a full-fledged inquiry after notice to the landholders or after hearing objections of any other interested person (vide Rr. 4, 5). Once a certificate is issued, the same is, under Section 38E(2), 'conclusive evidence' of the ownership of the protected tenant, and cannot be defeated by the result of any inquiry under second part of the Explanation to S. 38- E. The inquiry under S. 38-E(2) read with the Rules of 1973 referred to above, is to be done by the Tribunal (the Revenue Divisional Officer) and obviously his decision to grant the ownership certificate will not and cannot be jeopardised by the result of any inquiry by a subordinate official like the Tahslidar, who deals with the granting of

possession to a 'protected tenant. Further as held in T. Yadagiri Reddy supra the Collectors suo motu powers of revision under Section 50-B(4) of the Act in use of the words 'at any time' observed that 25 years after certificate issued and the concerned lands converted and sold to approximately 1100 persons as residential plots, though no period of limitation prescribed, still the Collector on facts held would not be justified in initiating a suo motu action, which has to be within a reasonable time, though the words at any time are used in the provision. The other question arisen therein is lands were subjected to declaration under land reforms ceiling on agricultural holdings Act 1973, opportunity of hearing the protected tenant in possession in ceiling proceedings against landlords, for no notice issued to the respondents and ultimately ceiling case came to be decided against them and thereafter notice of surrender issued for the surplus lands to the tenant in possession as the Tribunals failed to give opportunity of hearing before passing adverse orders, appeal against the High Court's setting aside the order of the Tribunal dismissed by the Apex Court for no merits by confirming the High Court orders. In Ibrahimpatnam Taluk Vyavasaya Coolie Sangham supra, it was observed in Para 9 on use of the words "at any time" in sub-Section (4) of Section 50-B of the Act that, those cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably and under the guise of "at any time", if suo moto power under sub-Section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo moto power "at any time" only means that though specific period such as days, months or years are not prescribed reckoning from a particular date, that does not mean that "at any time" should

be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation. The law of the land is further clear from the recent past three judge bench expression in K. Balreddy supra where it was held by the Apex Court clearly as reproduced supra that 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".

19. Once such is the legal position at the cost of repetition, the dismissal of the appeals by the 1st respondent joint collector without adjudication of the disputed questions if any in this regard and also in regard to the revision petitioners contention of the unofficial respondents are the sons of Syed Nabi and grandsons of Syed Ameer Ali. Syed Nabi and Ameer Ali are recorded as PTs in old Sy.Nos.27/1 (After rounding-up), 27/4, 27/5, 27/6 and 27/7. and thereby the un-official Respondents i.e., the sons and grandsons of Syed Nabi and Syed Ameer Ali do not have any claim over land covered by Sy.No.27/2 (Old) corresponding to new Sy.Nos.135 & 136 and Sy.No.27/3 (Old) corresponding to new Sy.Nos.132, 131 & 150, as the respondents are not the PTs.

20. Having regard to the above, all the revisions are to be allowed and to remand the matters to the R.1-Joint Collector for fresh determination.

21. Accordingly and in the result and having regard to the facts that said Kandada Yellaiah and Thatichettu Devaiah, from whom the revision petitioners claim right of succession, were the original Protected Tenants for

the lands in old Sy.Nos.27/2 and 3 which correspond to new Sy.Nos.135,136, 131,132, and the dismissal of their appeals by the Joint Collector confirming orders of the RDO in respect of correction of entries invoking Rules 3 to 5 of the Rules made under the Act and in issuance of P.T. certificates are unsustainable, all the five revisions are allowed by setting aside the dismissal appeal orders of the learned Joint collector and remanded the matters to the learned joint collector for fresh determination by affording opportunity to the parties and according to law and on merits preferably within 6(six) months clearing the cloud between the Revision Petitioners and unofficial respondents -the legal heirs of Syed Nabi and Syed Ameer Ali from whom the implead respondents claim as bona fide purchasers for value with improvements and constructions made for they are the Protected Tenants only for the other lands in Old Sy.Nos.27/1,4,5,6 and 7.

22. Consequently, miscellaneous petitions, if any pending in these revisions, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.02.05.2018

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