

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**Civil Revision Petition No.2804 of 2017**

**ORDER :**

This Revision is filed under Section 91 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Act') challenging the order dt.19.05.2017 of the Joint Collector, Malkajgiri-Medchal District passed in an appeal under Section 90 of the said Act.

2. The said Appeal was preferred by the petitioner against an order in File No.LRW/124/1975, dt.08.02.1977 of the Additional Revenue Divisional Officer, Hyderabad West, Ranga Reddy District (presently Revenue Divisional Officer, Malkajgiri) granting Sec.38E Ownership certificate to the 1<sup>st</sup> respondent for an extent of Ac.1.25 gts., in Sy.No.393 of Khanajiguda, Alwal Village, now in Malkajgiri Mandal of Medchal-Malkajgiri District.

3. The petitioner in this Revision claims to be a legal heir along with others of one Golla Mallaiah, who according to him was the protected tenant of the above land.

4. One Golla Pochaiah S/o. late G.Rajaiah (1<sup>st</sup> respondent) was issued ownership certificate for this land as well as Ac.2.77 gts., in Sy.No.394 of Khanajiguda village under Section 38-E of the Act vide proceedings No.LRW/124/1976 dt.08.02.1977 issued by the Additional Revenue Officer (Land Reforms), Hyderabad West.

5. The 1<sup>st</sup> respondent and Respondents 4 to 39, who are impleaded as per order dt.10.04.2019 in I.A. No.1 of 2018 in this CRP, contend that 1<sup>st</sup> respondent thus became the owner and possessor of this land and he had executed registered sale deeds for plots of land in Sy.No.393 and 394 in favor of respondents 4 to 39 after converting the above lands into residential plots and by obtaining a layout.

**The LGC.No. 17 of 2012 filed by petitioner and others**

6. The petitioner, claiming to be great grand-son of late Golla Mallaiah filed LGC.No.17 of 2012 before the Special Court under the A.P. Land Grabbing Prohibition Act, 1982 against A.M.Suryanarayana and 36 others. He contended therein that Golla Mankaiah was a protected tenant of land admeasuring Ac.1.38 gts., in Sy.No.392 of Khanajiguda village, and after his death, his two sons Komaraiah and Gandaiah made an application to the Revenue Divisional Officer, Chevella, Ranga Reddy District for grant of 38E ownership certificate under the Act; that the RDO, Chevella granted 38E certificate on 05.02.1977 vide File No.LRW/124/1975 in the names of Komaraiah and Gandaiah; and after the death of Komaraiah and Gandaiah, their legal heirs including the petitioner became the successors to the land in Sy.No.392. He also contended that the adjoining owner Golla Pochaiah (1<sup>st</sup> respondent herein) converted his land in Sy.No.393 and 394 into plots and sold more than the available land in those survey numbers to third parties; that under the guise of

said purchase, the purchasers encroached and grabbed the open land in Sy.No.392 belonging to the applicants in LGC.

7. Thus the petitioner himself admitted that his grand father obtained Section 38E certificate in respect of land in Sy.No.392 only and that the 1<sup>st</sup> respondent herein is the owner of the land in Sy.No.393 and 394 of Khanajiguda village. Petitioner did not disclose this fact before the Joint Collector in his appeal. The said LGC is pending consideration.

**The proceeding Case No.B/2073/2012 under Sec.40 of the Act filed by petitioner and others before the Tahsildar seeking succession to Golla Malliah**

8. In spite of the same, petitioner and others made an application on 22.11.2012 before the Tahsildar, Malkajgiri Mandal for grant of succession under Section 40 of the Act. His case was numbered as Case No.B/2073/2012 by the Tahsildar. He claimed half share to the applicants and other half share to respondents 2 to 10 therein by declaring both as legal heirs of late Golla Mallaiah in respect of Ac.1.25 gts., in Sy.No.393 of Alwal Village. On 06.11.2013, the Tahsildar granted succession as prayed for.

9. Golla Pochaiah (1<sup>st</sup> respondent herein) was impleaded as 1<sup>st</sup> respondent in the said proceeding, but according to him, his address was wrongly shown as H.No.1-24/56, Venkatapuram, Alwal instead of H.No.1-22/58, Venkatapuram, that he did not receive any notice in the said proceeding and fraud was played on him by the petitioner. It is also his contention that by that time, the land had already been

converted into residential plots and Tahsildar had no jurisdiction to pass the said order. In any event he contends that the said land does not belong to Golla Mallaiah and the said succession proceeding does not bind him or purchasers from him.

10. On 06.11.2013, the Tahsildar noted that the Protected Tenancy Register was in a torn condition and was not visible; there was a report submitted vide Lr.No.B/6271/2001 dt.24.11.2001 sent by the Mandal Revenue Officer, Malkajgiri to the District Collector, Ranga Reddy that Golla Mallaiah and Golla Mankaiah are protected tenants recorded against Ac.1.25 gts. in Survey No.393 of Alwal village and as per Kasra Pahani, the name of Golla Mallaiah was recorded as protected tenant and his name was also there in the pahanies for years 1958-59, 1960-61, 1961-62 and 1962-63 and so petitioner and others were in possession over the said land through their forefathers also. He held that the said land is agricultural land, that at present it is covered with non-agricultural operations by way of structures and vacant plots; applicants and respondent nos.2 to 10 before him have equal shares in the said land as successors to Golla Mallaiah.

**O.S.No.503 of 2014 filed by the petitioner :**

11. It is not in dispute that petitioner and others, on basis of the order dt.06.11.2013 in Case No.B/2073/2012 of the Tahsildar, Malkajgiri Mandal filed O.S.No.503 of 2014 before the XIV Additional District and Sessions Judge, Ranga Reddy District,

Malkajgiri against one G.Shankar and 35 others for partition and possession of land in Sy.No.393 and to declare the sale deeds executed by 1<sup>st</sup> respondent herein in favor of defendants 13 to 35 as null and void.

**The Appeal No.MDL/F2/6841/2015 before Joint Collector, Malkajgiri Medchal District by the petitioner under Section 90 challenging the Section 38-E Ownership Certificate granted to 1<sup>st</sup> respondent :**

12. Petitioner then filed appeal No.MDL/F2/6841/2015 before Joint Collector, Malkajgiri Medchal District to set aside the order dt.08.02.1977 of the Additional Revenue Divisional Officer, Hyderabad West granting 38E ownership certificate to the 1<sup>st</sup> respondent herein.

13. The Joint Collector, Malkajgiri Medchal District dismissed the said appeal on 19.07.2017 and set aside order dt.06.11.2013 in File No.B/2073/2012 of the Tahsildar Malkajgiri.

14. The Joint Collector called for the file bearing No.LRW/124/1975 from the office of the Revenue Divisional Officer, Malkajgiri Division, verified the said file and noted that a provisional list of protected tenants was prepared under Rule 4(1) of the A.P. (Telangana Area) Protected Tenant (Transfer of ownership of lands) Rules, 1973 and the name of Golla Pochaiah (1<sup>st</sup> respondent herein) was recorded as protected tenant of Ac.1.25 gts., in Sy.No.393 and Ac.2.17 gts., in Sy.No.394 and in Column No.10 of the said list, the name of Khaja Jalal was found recorded as pattedar; after publication

of the said provisional list; the then Additional Revenue Divisional Officer called for claims and objections and passed common orders dt.31.05.1975; and after hearing objections in respect of other survey numbers, he declared the said provisional list as final as required under rule 4 (3) of the said Rules; and thereafter, ownership certificate under Section 38E of the Act was issued on 05.02.1977 to the 1<sup>st</sup> respondent in respect of in Ac.1.25 gts., in Sy.No.393 and Ac.2.17 gts., in Sy.No.394 at Khanajiguda, Alwal village.

15. He rejected the plea of fraud by the 1<sup>st</sup> respondent raised by the petitioner and held that the said plea is not established. He then held that the Tahsildar Malkajgiri could not have granted succession under Section 40 of the Act to the petitioner and others vide order dt.06.11.2013 in File No.B/2073/12 when the protected tenancy rights were already extinguished with the issuance of Section 38E certificate to the 1<sup>st</sup> respondent and no tenancy is existing.

16. Challenging the same, this Revision is filed.

**Contentions of counsel for the petitioner:**

17. Counsel for the petitioner contended that this order is not sustainable in law; that the provisional list prepared under rule 4(1) of the Rules by showing the name of 1<sup>st</sup> respondent as protected tenant is without jurisdiction and 1<sup>st</sup> respondent played fraud on the authorities in getting the said provisional list prepared; no notice was also given to the petitioner or to his predecessors before preparing the

provisional list for grant of Section 38-E certificate to the 1<sup>st</sup> respondent; and that the said provisional list was not prepared based upon the final tenancy register prepared earlier which records the name of Golla Mallaiah as protected tenant for the above land. He also contended that the name of the 1<sup>st</sup> respondent was not reflected in any revenue records; that the Mandal Revenue Officer, Malkajgiri in his order dt.06.11.2013 rightly granted succession to the petitioner and others to the protected tenant Golla Mallaiah and the same could not have been set aside by the Joint Collector.

**Contentions of counsel for respondents:**

18. The counsel for respondents refuted the above contentions and supported the order passed by the Court below.

19. They contended firstly that proceedings LRW/124/75 dt.05.02.1977 of the then Additional Revenue Divisional Officer, Land Reforms, Hyderabad granting Section 38E ownership certificate to 1<sup>st</sup> respondent was challenged by the petitioner almost 40 years after it was issued, in 2015, and such challenge is not permissible and should have been rejected as time barred.

20. They also contended that by the very proceedings LRW/124/1975 dt.08.02.1977 of the Land Reforms Tribunal, Hyderabad West under which Section 38E ownership certificate was granted to 1<sup>st</sup> respondent for Ac.1.25 gts., in Sy.No.393 and for Ac.2.17 gts., in Sy.No.394 of Khanajiguda, Alwal village, Golla

Komaraiah and Gandaiah, sons of Golla Mankaiah were granted Section 38E ownership certificate for Ac.1.38 gts., in Sy.No.392; and so the plea of the petitioner that the 1<sup>st</sup> respondent's claim that they did not know about claims of 1<sup>st</sup> respondent is false.

21. It is also their contention that in O.S.No.777 of 2014 filed by petitioner before VII Senior Civil Judge, Ranga Reddy District, Malkajgiri against D. Durga Reddy and five others in respect of portion of Acs.0.32 ½ gts. forming part of Ac.1.25 gts. in Survey No.393 of Alwal Village for perpetual injunction, petitioner described himself as "Gaddam Mallesh", that in the succession proceedings before the Mandal Revenue Officer, Malkajgiri in Proceedings No.B/2073/2012, he described himself as "Gaddam @ Golla Mallesh" claiming rights of ancestors "Golla Mallaiah and Golla Mankaiah" and before the Joint Collector, Malkajgiri Medchal District he described himself as "G.Mallesh"; and this shows that he is not the legal heir of Golla Komaraiah and Golla Gandaiah, who are the sons of Golla Mankaiah.

22. It is contended that the basis for the order dt.06.11.2013 in Case No.B/2073/2012 of Mandal Revenue Officer, Malkajgiri Mandal, granting succession under Section 40 to the petitioner and others is a report B/6271/2001 dt.24.11.2001 of the Mandal Revenue Officer, Malkajgiri Mandal addressed to the District Collector, but the said report is not binding on the 1<sup>st</sup> respondent because it was prepared behind his back.

23. It is contended that 1<sup>st</sup> respondent had converted entire extent of land in Sy.Ndo.393 and 394 of Khanajiguda village into plots by obtaining layout, and sold it to respondents 4 to 39 and others under registered sale deeds from 1997 onwards and they made constructions therein, which the petitioner was aware and once the land ceased to be agricultural land, the Act would not apply.

24. It is contended that no notice was served on the 1<sup>st</sup> respondent in the proceedings Case No.B/2073/2012 initiated by the petitioner for grant of succession under Section 40 of the Act and the said order does not bind him.

25. The respondents denied that Golla Mallaiah was the protected tenant of Ac.1.25 gts. in Sy.No.393 of Khanajiguda Village and that his name was entered in the final tenancy register prepared under the Hyderabad Tenancy and Agricultural Land Rules, 1950. It is denied that 1<sup>st</sup> respondent had obtained the Section 38E certificate by playing fraud on the authorities.

26. It is also contended that petitioner suppressed filing of LGC No.17 of 2012 along with others before the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 admitting that 1<sup>st</sup> respondent is the owner of land in Sy.No.393 and 394 of Khanajiguda, Alwal village and purchasers from the 1<sup>st</sup> respondent had encroached land in Sy.No.392 of the said village belonging to the applicants.

**Consideration by the Court:**

27. Firstly, petitioner has filed the appeal under Section 90 of the Act before the Joint Collector, Malkajgiri Medchal District after 21.09.2015 challenging the order in File No.LRW/124/1975 dt.08.02.1977 under which 1<sup>st</sup> respondent was granted Section 38E ownership certificate for Ac.1.35 gts. in sy.No.393 of Khanajiguda, hamlet of Alwal village, claiming that he got knowledge on 03.06.2015 through documents filed by one V. Srinivas in I.A. No.276 of 2015 in O.S. No.70 of 2015 before the Additional Junior Civil Judge, Ranga Reddy District at Malkajgiri; that he obtained certified copy of the same on 21.09.2015; and he filed the appeal within 30 days from the date of knowledge and the said appeal is within time.

28. Thus, the Appeal was filed admittedly after 21.09.2015, more than 38 years after the order dt.08.02.1977 was passed by the Additional Revenue Divisional Officer, Hyderabad West granting Section 38-E Certificate to 1<sup>st</sup> respondent.

29. Admittedly, Golla Mankaiah is the son of Golla Mallaiah, and Golla Komaraiah and Golla Gandaiah are the sons of Golla Mankaiah.

30. In the proceeding LRW/124/1975 dt.08.02.1977 issued by the Additional Revenue Divisional Officer, Hyderabad West addressed to the Tahsildar, Hyderabad West Taluk filed as Ex.8 in the Revision, the said Officer states that he is sending patta certificates of 8 persons under Section 38E of the Act to the Tahsildar. At Sl.No.1 are

Komaraiah and Gandaiah, sons of Golla Mankaiah who are shown to be protected tenants of Ac.1.38 gts. in Sy.No.392; and at Sl.No.3 is 1<sup>st</sup> respondent Pochaiah who is shown as protected tenant of Ac.1.25 gts. in Sy.No.393 and Ac.2.17 gts. in Sy.No.394 of Alwal village.

31. Thus, in the same proceeding where Golla Mankaiah's sons are issued 38E certificate for land in Sy.No.392, 1<sup>st</sup> respondent was also issued 38E certificate for land in Sy.No.393 and 394 of Alwal village.

32. When this is so, it is difficult to believe that Komaraiah and Gandaiah, sons of Golla Mankaiah did not have knowledge of the 38E certificate granted to 1<sup>st</sup> respondent on 08.02.1977 in respect of Ac.1.25 gts. in Survey No.393. Therefore, any challenge to the same ought to have been within 60 days (as per Section 93) before the appellate authority invoking Section 90 of the Act. But they did not challenge it within the said time.

33. The petitioner has suppressed that he and others filed on 06.08.2012, LGC.No.17 of 2012 under Section 8(1) of the A.P. Land Grabbing (Prohibition) Act, 1982 against 1<sup>st</sup> respondent and others alleging that respondents grabbed 9038 sq.yds., belonging to the applicants in Ac.1.38 gts. in Sy.No.392 of Alwal village. In para 4 (c) thereof it is pleaded:

*“....It is submitted that the adjoining land owner G.Pochaiah laid his land in Sy.No.393 and 394 into plots and sold more than the land available in the said two sy.no. to third parties. The purchasers in turn sold to different persons. They are respondents 1 to 34. They purchased the land in sy.no.393 and 394 but they encroached and grabbed the open land of*

*the application schedule property comprised in sy.no.392 and claiming it as sy.no.393 and 394 in collusion with respondent No.35.” (emphasis supplied)*

34. Thus petitioner himself admitted that 1<sup>st</sup> respondent was the owner of the land in Sy.No.393 in the above pleading filed on 06.08.2012 before the Special Court. Therefore, his plea before the Joint Collector that he came to know about ownership of 1<sup>st</sup> respondent of the land in Sy.No.393, only on 03.06.2015 about the ownership of the 1<sup>st</sup> respondent is a false plea.

35. It appears that the petitioner developed an idea to grab land of the 1<sup>st</sup> respondent in Survey No.393 thereafter and then hatched a plan to first obtain succession under Section 40 of the Act from the Mandal Revenue Officer and then to challenge the Section 38-E Certificate granted to the 1<sup>st</sup> respondent on 08.02.1977.

36. The entire allegation of the petitioner against the 1<sup>st</sup> respondent is that the 1<sup>st</sup> respondent played fraud on the Additional Revenue Divisional Officer, Hyderabad (West) as well as other Revenue Officials and secured Section 38-E Certificate on 05.02.1997 in respect of the said land.

37. In **Joint Collector, Ranga Reddy vs. D. Narsing Rao**<sup>1</sup>, the Supreme Court held that even in cases of fraud, Revisional power under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli must be exercised within a reasonable period

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<sup>1</sup> (2015) 3 S.C.C. 695

keeping in mind effect on the rights of third parties over the property due to passage of considerable time, change of hands by subsequent bona fide transfers, and the orders attaining finality under the provisions of other Acts. It observed that delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. It observed that simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise, the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

38. As stated above, the petitioner's predecessors viz., Komaraiah and Gandaiah know about the Section 38-E certificate granted to 1<sup>st</sup> respondent on 08.02.1977 itself. On 06.08.2012, in LGC.No.17 of 2012, petitioner admitted knowledge of ownership of 1<sup>st</sup> respondent for the land in Survey No.393 and 394 of Alwal Village.

39. So, in the above circumstances, filing of the appeal after 21.09.2015, cannot be said to be an action by petitioner within reasonable time, even assuming for the sake of argument without conceding that there was any fraud allegedly played by 1<sup>st</sup> respondent.

40. In O.S.No.777 of 2014 filed by petitioner before VII Senior Civil Judge, Ranga Reddy District, Malkajgiri against D. Durga

Reddy and five others in respect of portion of Acs.0.32 ½ gts. forming part of Ac.1.25 gts. in Survey No.393 of Alwal Village for perpetual injunction, petitioner described himself as “Gaddam Mallesh”.

41. But, in the succession proceedings before the Mandal Revenue Officer, Malkajgiri in Proceedings No.B/2073/2012, he described himself as “Gaddam @ Golla Mallesh” claiming rights of ancestors “Golla Mallaiah and Golla Mankaiah” and before the Joint Collector, Malkajgiri Medchal District he described himself as “G.Mallesh”.

42. The different surnames used by the petitioner i.e., ‘Gaddam’ and ‘Golla’ throws doubt about the relationship of the petitioner with Golla Mallaiah, to whom he claims to be a legal heir.

43. The Joint Collector had noted in his order that the name of the 1<sup>st</sup> respondent was recorded in the provisional list of protected tenants prepared under Rule 4 (1) of the A.P. (T.A.) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 in respect of Ac.1.25 gts. in Survey No.393 and Ac.2.17 gts. in Survey No.394; thereafter, objections were invited and orders were passed under Section 38-E of the Act on 31.05.1975 in LRW/124/75 in respect of other survey numbers, and had declared the said provisional list as final list under Rule 4(3) of the Rules. This order was not challenged by any family member of Golla Mallaiah.

44. Sub-Section (2) of Section 38-E makes the Certificate issued under Section 38-E to 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 land holder and all other persons having any interest therein.

45. A Full Bench of this Court in **Sada vs. The Tahsildar, Uttoor, Adilabad**<sup>2</sup> held that if after following the procedure under Rule 4 of the above Rules, as in the instant case, an enquiry is conducted and ownership certificate is issued after hearing objections of landholder and interested persons, the said certificate is conclusive evidence as against the landholder and all other persons having interest in it.

46. Therefore, in view of Section 38-E(2) of the Act, the Section 38-E Certificate granted to the 1<sup>st</sup> respondent on 08.02.1977 for Ac.1.25 gts. in Survey No.393, is conclusive evidence of the title of the 1<sup>st</sup> respondent, and the petitioner, who is interested in the land is precluded from questioning it.

47. In the order dt.06.11.2013 in case No.B/2073/2012, the Tahsildar, Malkajgiri Mandal, without any material to show that the petitioner and other applicants under Section 40 of the Act are the relatives / legal heirs of Golla Mallaiah, on the basis of mere pleading of the petitioner concluded that they are legal heirs of Golla Mallaiah. No birth certificates, school records, Municipal or Record of Births and Deaths of the family members of Golla Mallaiah were produced before the Tahsildar.

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<sup>2</sup> 1987 (2) A.L.T. 749

48. Though 1<sup>st</sup> respondent was shown as party in the said order, his address was shown as H.No.1-24/56, Venkatapuram, Alwal Village when his correct address is Road No.1-22/58, Venkatapuram, Alwal. There is no material to show that notice in the said proceeding was served on the 1<sup>st</sup> respondent at all. Therefore the said order cannot bind the 1<sup>st</sup> respondent.

49. Also, the Tahsildar could not have entertained any application under Section 40 of the Act in respect of the said land when the 1<sup>st</sup> respondent had been issued Section 38-E Ownership Certificate on 05.02.1977 by the Additional Revenue Divisional Officer, Hyderabad (West) in LRW/124/1975 in respect of Ac.1.25 gts. in Survey No.393 of Alwal Village and consequently the land ceased to be one covered by the Act.

50. In the same order dt.06.11.2013, the Mandal Revenue Officer records that original Protected Tenancy Register is in a torn condition and records '*at present the land is covered with non-agricultural operations by way of partly structures and remaining part of the land is vacant by way of open plots*'. So, when the land itself ceased to be agricultural land, he could not have exercised the jurisdiction under the Act at all.

51. In my opinion, the petitioner has not established that he is legal heir of Golla Mallaiah or that Golla Mallaiah was not the protected tenant of land of Ac.1.25 gts. in Survey No.393 of Alwal village.

52. I hold that 1<sup>st</sup> respondent was the protected tenant of the said land and his name was found by the Joint Collector to have been noted in the provisional list of protected tenants prepared under Rule 4(1) of the A.P. (T.A.) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973; the said provisional list was confirmed by the Additional Revenue Divisional Officer, Land Reforms, Hyderabad (West) in his order LRW/124/75 on 31.05.1975; and thereafter, 1<sup>st</sup> respondent was rightly issued Section 38-E Ownership Certificate on 08.02.1977 by the said Officer.

53. The Joint Collector, in my considered opinion, considered all the relevant circumstances and dismissed the appeal of the petitioner challenging the proceeding LRW/124/1975 dt.08.02.1977 of the Additional Revenue Divisional Officer, Hyderabad (West), Ranga Reddy District, now Revenue Divisional Officer, Malkajgiri as well as rightly set aside the order dt.06.11.2013 of the Tahsildar, Malkajgiri in File No.B/2073/12.

54. I therefore do not find any merit in the Civil Revision Petition and it is accordingly dismissed with costs of Rs.5,000/- to be paid to the 1<sup>st</sup> respondent by petitioner within four (04) weeks.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 03-06-2019

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