

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.26743 of 2006

ORDER:

This Writ Petition is filed assailing the letter issued by the respondent No.1/A.P.Bhoodan Yagna Board, vide Lr.No.C/359/2006, dated 15.09.2006, and the consequential proceedings No.B/1541/2005, dated 28.09.2006, of the respondent No.3/Mandal Revenue Officer.

2. The brief facts of the case are that the petitioners are the protected tenants of land admeasuring Acs.16-26 guntas, Acs.10-31 guntas and Acs.17-06 guntas (total admeasuring Acs.44.23 gts.), situated in survey Nos.173, 179 and 213 respectively of Daira Village, Keesara Mandal, Ranga Reddy District. By virtue of provisions of Section 38-E of The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Tenancy Act'), they were declared as owners of the above said lands along with other lands vide proceedings No.E/7303/81, dated 30.11.1981. Subsequently, they have been issued pattadar passbooks and title deeds, their names were mutated in the revenue records and they are in continuation possession and enjoyment of the above mentioned lands, without any interruption. The respondent Nos.4 to 8 tried to interfere with the possession and enjoyment of the petitioners' lands on the ground that the 3rd respondent/the Mandal Revenue Officer has issued proceedings, dated 28.09.2006, allotting the lands to them. The 3rd respondent has allotted the lands based on the proceedings, dated 12.04.2005, issued by the Secretary, Andhra Pradesh Bhoodan Yagna Board (for short 'Bhoodan Board'). These

proceedings of the Bhoodan Board or 3rd respondent were issued without issuing any notice to the petitioners, behind their back. Hence, they were constrained to file the present writ petition challenging the validity of the above said proceedings of the 3rd and 1st respondents as being illegal, bad, arbitrary, and contrary to the provisions of the Tenancy Act, among other grounds.

3. Heard Sri MVS Suresh Kumar, the learned Senior counsel appearing for the petitioners, Sri G.Kiran Kumar, learned Standing Counsel for the respondent No.1, and the learned Government Pleader for Revenue appearing for respondents No.2 and 3.

4. Learned Senior counsel Sri MVS Suresh Kumar has vehemently contended that the issuance of the impugned proceedings by the 3rd respondent/Mandal Revenue Officer based on the purported proceedings issued by the 1st respondent/Bhoodan Board are *per se* illegal and legally unsustainable, more particularly in view of the fact that the lands in question are covered by the provisions of the Tenancy Act. The authorities cannot dispossess the petitioners or take away their rights which are vested in them by virtue of the provisions of the Tenancy Act, purportedly under the alleged gift deed (Bhoodana Patramu) given by the pattadar and the subsequent proceedings of the Bhoodan Board.

5. Per contra, the learned Standing Counsel for the Bhoodan Board has vehemently contended that the lands are vested with the Board by virtue of Gift Deed executed by the original pattadar and the same is in consonance with the Rules made under Shri Acharya Vinoba Bhave Sarvodaya Bhoo Yagna, Hyderabad Land

Revenue Special Rules of 1951 (hereinafter referred to as 'the Rules'), under the said Rules the authorities are vested with the power to give the pattas to the persons selected in consonance with the avowed objects of the Bhoodan Board.

6. Having heard the learned counsel appearing on behalf of the parties and having gone through the record, a bare perusal of the alleged gift deed, dated 12.05.1954, (Bhoodana Patramu) executed by the original pattadar shows that the same is a printed proforma copy without any registration or validation done by any Registering authority. The said 'Bhoodana Patram' shows the intention of the pattadar Sri Ragi Narayana Reddy S/o.Raghava Reddy to donate land to an extent of Acs.21.00 guntas situated at Keesara Dayara Village, Medchal Taluq, Hyderabad District, but the said gift deed is not a registered document. The subsequent letter dated 02.01.1963 is addressed by the Hyderabad Bhoodana Yagna Samithi to the Tahsildar, Medchal Taluq, to accept the Razinama patras enclosed therewith. Based on the above Razinama Patras, the Tahsildar, Medchal Taluk, has addressed a letter, dated 16.01.1963, to the Convenor, Bhoodan Distribution Committee, Hyderabad, accepting the Razinama Patras, to which a map is annexed showing that land bearing Survey No.348 (old), 179 (new), admeasuring Ac.6.20 guntas, survey No.180 admeasuring Acs.2-20 guntas, and survey No.213 admeasuring Ac.12.00 guntas, totally admeasuring Ac.21.00 guntas, was accepted. The map annexed to the said letter clearly shows that the 'Razinama' for which the lands were accepted are only part of the land in survey Nos.179, 180 and 213 and not the entire extent of land thereof.

7. There is nothing on record to show that the protected tenants who were in possession and occupation of the lands were served with any notice before the impugned orders are passed. The then State of Hyderabad has initially promulgated the Hyderabad Tenancy Act, 1950 and subsequently after the formation of the State of Andhra Pradesh, the same was adopted and the name changed to Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950.

8. Section 2(r) defines "Protected" means a person who is deemed to be a protected tenant under the provisions of this Act. Section 2(v) defines "Tenant" means an asami shikmi who holds land on lease and includes a person who is deemed to be a tenant under the provisions of this Act. Under Sections 34, 37 and 37-A of the Tenancy Act, the claim of persons who are recognised as protected tenants are enunciated. Under Sections 38, 38-A, 38-B, 38-C, 38-D and 38-E of the Tenancy Act, the rights of the protected tenants are enumerated. Section 40 of the Tenancy Act makes it clear that the rights of the protected tenant are heritable and the persons eligible to be declared as the legal heirs of the protected tenant for the purpose of that section. Under the provisions of the Tenancy Act, various rights and obligations are conferred on the protected tenant and the landlord. Under Section 38-E, the protected tenant is entitled to ownership certificate if the conditions stated in Section 38-E are satisfied.

9. The provisions of the Tenancy Act are beneficial in nature and under the said Act various rights are vested on the tenants who were in occupation of the lands as on the date of promulgation

of the Tenancy Act. Under the Tenancy Act, certain class of tenants were declared as protected tenants and special rights have been conferred. A person who is conferred the status of “protected tenant” is accorded protection under the provisions of the Act which are beyond the scope of ordinary law. In fact, the Act been a beneficial Act, it has an overriding effect on other Laws, once a person has been conferred the status of a protected tenant, the rights conferred on the protected tenant cannot be taken away nor can they be meddled with except under the provisions of the Tenancy Act. After the provisions of Section 38-E were incorporated, those persons who satisfied the conditions laid down therein were declared as protected tenants and were recognized as owners and conferred ownership rights under the Act. These rights conferred under Section 38-E of the Act have been upheld by this Court and the Apex Court in a catena of decisions. The rights conferred under the Tenancy Act cannot be taken away under any other enactment or law.

10. In the decisions reported in **SADA v. TAHSILDAR**¹, a Full Bench of this Court at paragraph Nos.48 and 50 held as under:-

“A person who is declared as a protected tenant under Sections 34, 37, 37-A and continues to hold that status even on the notified date would, subject to Section 38(7) and the proviso to Section 38-E(1) becomes owner by statutory transfer of title’ whether physically in possession or not on the date of notification and without being restored to possession by the notified date.

.... that once the certificate is issued and has, after any proceedings in appeal or revision, become final, it is conclusive proof of ownership and the validity thereof cannot be challenged

¹ 1987 (2) APLJ (HC) 397

by the landholder or anybody claiming through him or 'other persons having any interest therein.'.....

11. In the decisions reported in **KOTAIAH v. PROPERTY ASST. OF THE BAPTIST CHURCHES (PVT.) LTD.**², the Hon'ble Supreme Court at para 22 (i) held as under:-

"The protected tenant has a right to become full owner of the lands in his possession. He becomes the owner when the government issues a notification under Section 38-E. We are told that the government had issued such a notification on October 1, 1973, relating to the district where the lands in question are situated. It was about three years earlier to termination of the appellants' tenancy by the Association. If the appellants had a right to become owners of the tenanted lands, the question of terminating their tenancy would not arise."

12. In the decisions reported in **BODDAM NARSIMHA v. HASAN ALI KHAN**³, the Hon'ble Supreme Court at para No.14 held as under:

"..... The benefit of Section 38-E was given to persons who hold the lands as protected tenants and who continue to hold the lands as protected tenants on 1.1.1973. The protected tenancy has to be enforced on 1.1.1973. Under Section 38-E, ownership rights are conferred only upon persons who continue to be protected tenants as on 1.1.1973. They form a special class....."

13. The Hon'ble Supreme Court in the decision reported in **STATE OF A.P. v. T.YADAGIRI REDDY**⁴, at para No.39 held as under:

"Section 38-E specifically provides for the transfer of ownership of such lands held by the protected tenants. It provides that such lands would get automatically transferred with effect from the notified date and a certificate in the

² (1989) 3 SCC 424

³ (2007) 11 SCC 410

⁴ (2008) 16 SCC 299

prescribed form declaring him as the owner, would be issued by the Tribunal after holding the necessary enquiry.”

14. In **EDUKANTI KISTAMMA v. S.VENKATAREDDY**⁵, the Hon’ble Supreme Court at paragraph Nos.19, 20 and 26 observed as under:-

“In view of the above, it is evident that the scheme of the Act provides that a person who is a protected tenant has a right to get the ownership in accordance with the statutory provisions, provided 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. The person should be in lawful possession of the land on the date of commencement of the 1950 Act to claim benefits under the Act. The Government has to make a declaration by publishing the notification in the gazette in respect of any area and from such date as may be specified therein, that the ownership of all lands held by protected tenants which they are entitled to purchase from their landholders in such area under the Act, subject to the conditions laid down under Section 38(7) of the Act would stand transferred to and vest in the protected tenants holding them as such and from such date the protected tenants shall be deemed to be the full owners of such lands.

The certificate issued under Section 38-E(2) 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.....

The 1950 Act being the beneficial legislation requires interpretation to advance social and economic justice and enforce the constitutional directives and not to deprive a person of his right to property. The statutory provisions should not be construed in favour of such deprivation. Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not

⁵ (2010) 1 SCC 756

otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose."

15. In the decisions reported in **B.BAL REDDY v TEEGALA NARAYANA REDDY**⁶, the Hon'ble Supreme Court at para 11 observed as under:-

"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 protected tenant has lost possession of the land in question, that by itself does not terminate the "protected tenancy".

16. The law laid down in the above decisions clearly reveal that the rights of the protected tenant who has been conferred an ownership under Section 38-E of the said Act cannot be taken away except under the provisions of the Tenancy Act.

17. In this particular case, the so-called 'Razinama' or 'Bhoodana form' alleged to have been executed by the original pattadars cannot take away the rights vested under the Tenancy Act. The Rules purported to have been made under the Hyderabad Land Revenue Act of 1370 Fasli cannot by any stretch of imagination override or take away the rights which are confirmed

⁶ (2016)15 SCC 102

under the Tenancy Act. Therefore, the issuance of the impugned proceedings by the third respondent/Mandal Revenue Officer under the alleged 'Bhoodana Patramu' cannot be countenanced and the same is liable to be set aside. In the absence of any record to show that the gift deed executed by the pattadar is a registered instrument, the Board cannot get any right nor can it take away the vested rights of the protected tenants or persons who have been issued Ownership Certificates under Section 38-E of the Tenancy Act.

18. For the above mentioned reasons, the Writ Petition is allowed and the impugned orders are set aside.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date : 12-12-2019.
smr/sur

A.ABHISHEK REDDY, J