

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN
WRIT PETITION NO: 844 OF 2023

Between:

1. Amgoth Ravi, S/o. Amgoth Harya, Occ. Agriculture, R/o. H. No. 2-86, Hanmaya Nayak Thanda, Maddur village, Shabad Mandal, Ranga Reddy District.
2. Amgoth Rathan, S/o. Amgoth Harya, Occ. Agriculture, R/o. H. No. 2-86, Hanmaya Nayak Thanda, Maddur village, Shabad Mandal, Ranga Reddy District.

...PETITIONERS

AND

1. The State of Telangana, Rep. by its Principal Secretary, Revenue Department, Secretariat, Hyderabad.
2. The Thasildar, Kottur Mandal, Ranga Reddy District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in issuing the impugned endorsement in file No.B/760/2022, dated 22/12/2022 directing the petitioners to approach the civil court and get succession of PT rights and then submit application for restoration of the possession of the land in Sy.No.18, admeasuring Ac.20-00 guntas at Mallapur Village, Kottur Mandal, Ranga Reddy District, covered by 38-E certificate though there is no dispute with regard to succession of the petitioners in respect of the above land and further though on issuing 38-E certificate the nature of the above land is no more PT land and there is no necessity for the petitioners to approach civil court to obtain succession certificate, as illegal, unlawful, contrary to law and consequently direct the respondents to conduct enquiry into the above petition submitted by the petitioners for implementation of 38-E in the ROR and for restoration of possession of the same under proviso to Section 38-E (2) of the Act as directed by the Hon'ble High Court in WP No. 45680/2022;

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the 2nd respondent to re-consider the petition filed by the petitioners dated 13-12-2022 filed under proviso to Section 38-E (2) of Tenancy Act, 1950 for restoration of possession of the land in Sy.No.18, admeasuring Ac.20-00 guntas at Mallapur Village, Kottur Mandal, Ranga Reddy District covered by 38-E certificate and the implementation the same in the ROR, without reference to impugned endorsement, dated 22/12/2022.

Counsel for the Petitioners: SRI. M DAMODAR REDDY

Counsel for the Respondents: AGP FOR REVENUE

The Court made the following:

HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.844 of 2023

ORDER:

Heard learned counsel for the petitioner and learned Assistant Government Pleader for Revenue.

2. Petitioners herein have submitted an application dated 13.12.2022 with respondent No.2 under Section 38-E(2) r/w Section 40 of Tenancy Act, 1950 for grant of Succession and also for restoration of possession to an extent of Acs.20-00 gts in Sy.No.18 of Mallapur Village, Kottur Mandal, Rangareddy District. The said application was not considered by the respondent No.2. Therefore, petitioners herein have filed W.P.No.45680 of 2022 and this Court vide order dated 22.12.2022, disposed of the same directing respondent No.2 to consider the aforesaid application submitted by the petitioners and also order passed by this Court in Writ Appeal No.451 of 2021 dated 28.09.2021 and pass appropriate orders in accordance with law as expeditiously as possible. In compliance of the said order, respondent No.2 vide impugned endorsement dated 22.12.2022 rejected the claim of the petitioners, stating that he is not competent to determine the LR's of the deceased person in summary enquiry to grant succession under Section 40 of the Tenancy Act, 1950. The petitioners have to obtain succession certificate

from Competent Civil Court and then should approach him for grant of succession under Section 40 of the Tenancy Act. He also relied upon Judgment of this Court in *W.P.14924 and 15031 of 2021* and also decision of the Hon'ble *Supreme Court* in *Civil Appeal No.7996, 7997 and 7998 of 2016*. With the said observations, respondent No.2 has advised the petitioners to approach competent Civil court and obtain Succession Certificate determining them as LR's of the deceased person and then file an application before respondent No.2 under Section 38-E(2) r/w Section 40 of Tenancy Act, 1950.

3. It is relevant to note that the view taken by the learned Single Judge in Judgment dated 27.07.2021 in W.P.Nos.14924 & 15031 of 2021 was not approved by Division Bench in its Judgment dated 28.09.2021 in W.A.No.451 of 2021. Few paragraphs of the said judgment of Division Bench are relevant and same are extracted hereunder:-

(i) *More important it held as under:-*

"the new proviso to Section 38-E(2) was introduced by Act 2 of 1979 to get round the difficulty created by the judgment in Narsaiah's case (1979 (1) Andh WR (HC) 23). There, it was held that once the protected tenant has become owner, there is no machinery in the Act enabling him to obtain possession. It was pointed out that the provision in the latter part of the Explanation to Section 38-E(1) enabling a 'protected tenant' to obtain possession through the Tahsildar was not applicable

to the cause of an application by an owner, even if be a cause of a protected tenant becoming an owner.

In our view the Legislature wanted to fill up the difficulty created by Narasaiah's case when it added the new proviso to 5. 38E(2) enabling the Tahsildar to restore possession to a former protected tenant who had become the owner.

It is, however, argued that this amendment is prospective from 11-1-1979 and that the benefit of restoration of possession through the Tahsildar is available only tho those protected tenants who have been given ownership certificates after 11.01.1979. In our view, this is not protected tenants who obtained ownership certificates before 11.01.1979 should go to the Civil Court and those obtained certificates after 11.01.1979 go to the Civil Court and those obtained certificates after 11.01.1979 should go to the Tahsildar. The intention of the Legislature was to benefit all cases, whether the ownership certificates were issued before or after Act 2 of 1979. As already stated, the actual date of issuance of the ownership certificate has no bearing on the statutory transfer of ownership under Section.38-E(1) with effect from the date of notification for the certificate dates back to the date of the notification under Section 38-E(1)."

(ii) So according to this decision any protected tenant, who obtained certificate under Section 38-E of the Act and has become an owner, can seek restoration of possession under proviso to Section 38-E (2) even if he lost possession before 11.01.1979.

(iii) This decision indicates that the proviso to Section 38-E (2) entitles a protected tenant even after he obtained a certificate under Section 38E to seek restoration of possession and the legislature never intended to put any limitation/time limit for the same by linking the date of issuance of ownership certificate to the date when the application for restoration of possession was sought under the said provision. Thus the concept of laches/delay has no application at all having

regard to the beneficial legislation intended to protect tenants and their successors.

(iv) The learned Single Judge, having referred to the decision in *Sada* (1 *Supra*) appears to have not noticed the above passages in the said judgment and incorrectly applied the concept of delay/laches, which he ought not to have done.

(v) Section 40 of the Act vests rights in the successor of a protected tenant to acquire all rights and interests vested in the land on a protected tenant.

(vi) Whether the appellant has made out a claim for this relief, ought to be decided by the authorities under the Act; and the aspect of delay in approaching the 3rd respondent is not relevant.

(vii) The learned Government Pleader did not bring to our notice any provision of the Act or the Rules made there under fixing any time limit to make the applications of the above nature. Had the Legislature intended that there should be any limitation for filing these applications, the Legislature or the Rule-making authority would have prescribed a period of limitation. But, it appears to have not done so.

(viii) The learned Single Judge also went into the following question.

"Whether a Mandamus can be issued to restore possession to a protected tenant at any time and whether a Writ can be issued at the will and pleasure of successor to a protected tenant to restore possession of land covered by tenancy rights. According to us, such was not the relief sought in the Writ Petition by the appellant."

(ix) The appellant had only complained of inaction by respondent Nos.2 and 3 in considering his application, but he has not asked for a Writ of Mandamus from the High Court to restore his possession. Under a misconception that such a Writ of Mandamus has been sought, the learned single Judge went into the said aspect when it did not arise for consideration in the case.

(x) The appellant had admittedly filed copy of Section 38-E Certificate issued to his father by the competent authority under the Act on 23.07.1975 and he had also filed the Death Certificate of his father along with papers in the Writ Petition.

4. Vide common Judgment dated 12.08.2016 in Civil Appeal No.7996 of 2016 (Arising out of SLP (Civil) No.3438 of 2011) similar view is taken by three judgments of Hon'ble Apex Court. Relevant paragraphs of the said Judgments are extracted below:

(i) 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.) LTD¹**, and it was laid down:-

“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.”

(ii) It is not the case of the appellants that alienations effected by the landholders were in conformity with aforesaid provision. The appellate authority was therefore right in holding that the present appellants had no locus standi. It, however, erred in considering the merits of the matter despite

¹ (1989) 3 SCC 424

having rendered such a finding on this issue of locus standi. In our view all transactions entered into without following the procedure prescribed in Section 38-D of the Act are without any legal effect as held in Kotaiah's case (*supra*)

(iii) 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 vs. Hasan Ali Khan**² are quite eloquent.

"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, under Section 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(2) read with the

² (2007) 11 SCC 410

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 jeopardized by the result of any inquiry by a subordinate official like the Tahsildar who deals with the granting of possession to a 'protected tenant.'

(iv) 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.

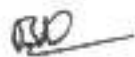
5. In view of the law laid down by a Division Bench of this Court and Supreme Court in the above stated judgment, the impugned endorsement is contrary to the same. It is liable to be set aside. Accordingly impugned endorsement vide proceedings No.B/760/2022 dated 22.12.2022 of the 2nd respondent is set aside and the matter is remanded back to the 2nd respondent with a direction to consider the aforesaid application dated 13.12.2022 submitted by the petitioner afresh and pass appropriate orders in accordance with law by putting the petitioners and all affected parties on notice and affording them an

opportunity of hearing. He shall complete the aforesaid exercise as expeditiously as possible. There shall be no order as to costs.

s a sequel, the miscellaneous petitions, if any, pending in the Writ Petition shall stand closed

SD/- MOHD SANAULLAH ANSARI
ASSISTANT REGISTRAR

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SECTION OFFICER

To,

1. The Principal Secretary, Revenue Department, Secretariat, State of Telangana, Hyderabad.
2. The Thasildar, Kottur Mandal, Ranga Reddy District
3. One CC to SRI. M DAMODAR REDDY Advocate [OPUC]
4. Two CCs to AGP FOR REVENUE, High Court for the State of Telangana, Hyderabad. [OUT]
5. Two CD Copies

HIGH COURT

KLJ

DATED:19/01/2023

ORDER

WP.No.844 of 2023



**WRIT PETITION IS DISPOSED
OF WITHOUT COSTS**