

Shivareddypally Ananthaiah (Died per LRs.) and Others Vs The Joint Collector, R.R. District and Others

Court: Andhra Pradesh High Court

Date of Decision: Nov. 27, 2013

Hon'ble Judges: M.S. Ramachandra Rao, J

Bench: Single Bench

Advocate: Vijayakumar Devineni and Sri V.L. Surendra, for the Appellant; A. Narsimha Reddy, Sri C.R. Pratap Reddy and Sri K. Goverdhan Reddy, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.S. Ramachandra Rao, J.

As these two cases are inter connected, these two cases are being disposed of by this common order. One

Chandramma, W/o. Late Hema Reddy (6th respondent in the writ petition) was the Inamdar of an extent of Acs. 15.20 gts. in Sy. No. 1 of Parigi

Village and Mandal, Ranga Reddy District. In the said land, Shivareddypalli Yellappa (for short, "Yellappa") was a protected tenant. He had three

sons by name Venkataiah, Ananthaiah and Narayana. Ananthaiah died and petitioner Nos. 1 to 3 in the writ petition, who are also petitioner Nos.

2 to 4 in the CRP, are his legal representatives. The 4th petitioner in the writ petition, who is also the 5th petitioner in the CRP, is the widow of

Narayana.

2. The petitioners made application to the Revenue Divisional Officer, Chevella (the 2nd respondent in the writ petition and in the CRP) for grant

of Occupancy Rights Certificate (for short, "ORC") to them u/s 7 of the A.P. (T.A.) Inam Abolition Act, 1955 for an extent of Acs. 11.04 gts. in

Sy. No. 1. The said application was numbered as File No. L/2562/1994.

3. One Gunjari Venkataiah (4th respondent in writ petition) and Uppari Somalingam (5th respondent in writ petition) claimed to have purchased an

extent of Acs. 2.00 each on the basis of an unregistered and unstamped sale deed dt. 26.12.1957 allegedly executed in their favour by the

Inamdar, Late Hema Reddy. They also filed applications u/s 8 of the said Act for ORC. Their applications were numbered as File Nos. L/6441/88

and L/8810/89 respectively.

4. By order dt. 22.07.1994, the 2nd respondent granted ORC to Gunjari Venkataiah and Uppari Somalingam for an extent of Ac. 1.00 gts. and

Ac. 1.30 gts. By a separate order dt. 07.04.1995 in L/2562/1994, the 2nd respondent granted ORC to the petitioners in respect of only Ac. 0.16

gts. in Sy. No. 1 and rejected their claim in respect of the rest of the land.

5. Aggrieved by the order dt. 07.04.1995 in File No. L/2562/1994 passed by 2nd respondent granting them ORC only for Ac. 0.16 gts. and

rejecting their claim for the total extent of Acs. 11.04 gts., the petitioners filed u/s 24 of the Act, an appeal in File No. F1/4893/95 before the Jt.

Collector, Ranga Reddy District (the 1st respondent in the writ petition and in the CRP). By order dt. 05.02.2001, the 1st respondent dismissed it.

Challenging the same, CRP. No. 4347 of 2001 is filed by the petitioners.

6. The petitioners also filed appeal vide case No. F1/6289/1994 before the 1st respondent challenging the grant of ORC to Gunjari Venkataiah

and Uppari Somalingam (respondents Nos. 4 and 5 in the writ petition) for Ac. 1.00 and Ac. 1.30 gts. in Sy. No. 1.

7. The Inamdar's wife Smt. Chandamma (the 6th respondent in the writ petition) also challenged these orders granting ORC to Gunjari

Venkataiah and Uppari Somalingam by filing Appeal in case No. F1/6974/1994 before the 1st respondent.

8. Uppari Somalingam also filed another appeal being case No. F1/9647/1994 before 1st respondent against Gunjari Venkataiah challenging the

grant of ORC to the latter in respect of Ac. 1.00 in Sy. No. 1.

9. By a common order dt. 19.06.2004, the 1st respondent dismissed all the appeals and confirmed the orders of the 2nd respondent granting

ORC to petitioners for Ac. 0.16 gts., to Gunjari Venkataiah for Ac. 1.00 and to Uppari Somalingam for Ac. 1.30 gts. in Sy. No. 1.

10. This common order dt. 19.06.2004 is challenged by the petitioners in WP. No. 16335 of 2004.

11. It is pertinent to note that the sale deed dt. 26.12.1957 allegedly executed by Late Hema Reddy, the husband of the 6th respondent in the writ

petition, Smt. Chandamma is only in respect of Ac. 2.00 and was executed in favour of Gunjari Balaiah, the father of Gunjari Venkataiah and

Uppari Narayana, father of Uppari Somalingam, jointly. It is an unregistered and unstamped document in Urdu.

12. It is also important to note that the Pahani for the year 1973-74 for the extent of Acs. 15.22 gts. in Sy. No. 1 shows Hema Reddy as Pattedar

and the following persons as occupants without indicating the extents in the occupation of each of these occupants: (1) Avula Adivaiah; (2)

Narayana; (3) Nallanna; (4) Ameeroddin; (5) Ramchander; (6) Ananthaiah; (7) Subhan Sab; and (8) G. Balaiah.

13. Among these, Ananthaiah is the son of the protected tenant Yellappa, Gunjari Balaiah is father of Gunjari Venkataiah. Although the Pahani also

shows ""Narayana"", it does not indicate the surname of the said person. Therefore, it is possible that the said Narayana could be the son of the

protected tenant Yellappa or the father of Uppari Somalingam. Thus there is ambiguity.

14. In B. Ramender Reddy v. District Collector, Hyderabad 1993 (2) An. W.R. 84, a Division Bench of this Court has held that abolition of

Inams under the Act was affected on 20.07.1955; that the Inam lands vested in the State on 20.07.1955; but as the other provisions in the Act

were brought into force from 01.11.1973, if the Inamdar or various types of tenants were in possession of the Inam land as on 01.11.1973, they

would be entitled to ORC under the Act; that the relevant date for the purpose of recognising the Occupancy Rights u/s 4 to 8 of the Act is

01.11.1973 and if on that date, either the Inamdar or the different categories of the tenants, are in possession of the land, they would be entitled to

seek grant of Occupancy Rights.

15. In N. Sudershan Reddy and Others Vs. Smt. Kannamma (deceased by LRs) and others,, , a Division Bench of this Court held for the purpose

of Sections 3(2), Clauses (a), (b), (c), (e) and (f), the relevant date of coming into force of the Act is 20.07.1955 and other provisions of the Act

came into force on 01.11.1973 as per the notification of the State Government; that there were two different dates of vesting i.e., 20.07.1955 and

01.11.1973; that notwithstanding the abolition of the Inams under the Act, the mutual rights and obligations of an Inamdar and his tenant to the

extent to which they were not inconsistent with the express provisions of the Act were specifically saved by Section 33 of the Act and they would

continue even after 01.11.1973. The Bench also held that the provisions of Section 4 to 8 of the Act for registration of persons in possession of

Inam lands as Occupancy Right Holders are unaffected by the date of vesting and rejected the contention that the rights of the tenants in the Inam

land would not survive the date of vesting, i.e., 01.11.1973.

16. In S. Rangaiah and Others Vs. Collector and Others, this Court held that the right of declaration as occupants was available only in respect of

lands of which the applicant/s were in personal cultivation on 01.11.1973. In the said case, it was held that the applicants who were claiming

through a protected tenant for Occupancy Rights u/s 7 of the Act were not entitled to relief if they are not in possession of the land on 01.11.1973.

17. In view of this legal position, claimants seeking ORC should be in possession of the land as on 01.11.1973. The Pahani for 1973-74 alone

would provide this information. But, in the said Pahani, as mentioned above, the extents in the occupation of each of the occupants, is not given.

This is not disputed by either the counsel for the petitioners or the counsel for the respondents.

18. It is also surprising that even though only Acs. 2.00 in Sy. No. 1 was allegedly sold under the unregistered and unstamped sale deed dt.

26.12.1957 by Hema Reddy to Gunjari Balaiah and Uppari Narayana, in the order dt. 26.04.1994 of the 2nd respondent in L/6441/88 and

L/8810/89, it was noted that an extent of Acs. 4.00 was sold. This finding is clearly contrary to the record. Moreover, it is not known how the

Inamdar/landholder could have sold land to third parties such as Gunjari Balaiah and Uppari Narayana on 26.12.1957 when there is a protected

tenant Yellappa in the land. Under S. 38D of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, without offering the land to

the protected tenant, the landholder cannot sell to third parties. There is nothing on record to show that the procedure u/s 38D of the Tenancy Act

has been followed by the Inamdar before allegedly selling the land to the above two individuals. Even otherwise, whether title could be transferred

to these persons without a registered sale deed, in violation of the provisions of the Transfer of Property Act, 1882 or the Registration Act, 1908 is

also to be considered.

19. The 2nd respondent, also noticed that the legal representatives of Yellappa i.e., petitioners objected to the consideration of the claim of Gunjari

Venkataiah, S/o. Gunjari Balaiah and Uppari Somalingam, S/o. Uppari Narayana for grant of Occupancy Rights Certificate but held that they have

no concern as their claim is pending before Mandal Office for preliminary enquiry and that the VAO of the village has confirmed the possession of

Gunjari Venkataiah and Uppari Somalingam over Ac. 1.00 and Ac. 1.30 gts. in Sy. No. 1, respectively. In my opinion, the 2nd respondent could

not have ignored the valid objections of the legal representatives of the protected tenant Yellappa and considered in isolation the claims of Gunjari

Venkataiah and Uppari Somalingam for Occupancy Rights. The 2nd respondent should have jointly considered the claim of the petitioners and

respondents 4 and 5. Moreover, the 2nd respondent should consider the possession of the claimants or their predecessors as on 01.11.1973 only,

and could not have taken into account any report of the VAO in 1994, as to the extent in occupation of the said individuals. In view of these

infirmities, the order dt. 26.04.1994 of the 2nd respondent in Case No. L/6441/88 and L/8810/89 and the consequent Occupancy Rights

Certificate dt. 12.08.1994 and 22.07.1994 in favour of respondent Nos. 4 and 5 cannot be sustained.

20. When the said orders were challenged before the 1st respondent in Case Nos. F1/6289/1994, Case No. F1/6974/94 and Case No.

F1/9647/94, the 1st respondent, having noticed the entries in the Pahani for the year 1973-74 as to occupants in the land in Sy. No. 1, referred to

Section 102 of the A.P. (T.A.) Tenancy and Agricultural Lands Act, 1950 and held that the provisions of the Act are not applicable to Inam lands.

This finding is unsustainable because Section 102 only refers to service Inam lands and Inams held by religious or charitable institutions and makes

the Act inapplicable to them and to other categories of land mentioned therein. S. 102 is not attracted for the subject lands as they do not fall in

these categories. Therefore the finding of the 1st respondent that Section 102 is applicable to the facts of the case is unsustainable. Also Section 33

of the A.P. (T.A.) Abolition of Inams Act, 1955 enacts that nothing contained therein shall in any way be deemed to affect the application of the

provisions of the A.P. (T.A.) Tenancy and Agricultural Lands Act, 1950 to any Inam or to the mutual rights and obligations of an Inamdar and his

tenants, save in so far as the said provisions are in any way inconsistent with the express provisions of the Inams Act. So mere coming into force of

the Inams Abolition Act would not wipe away the rights of protected tenants vis-a-vis the Inamdar. This provision of law has been conveniently

ignored by the 1st respondent. The 1st respondent also ignored the principle of law that possession of the claimants as on 01.11.1973 alone is

relevant and even though the Pahani for the year 1973-74 makes no mention of the extents in occupation of the various claimants' predecessors-

in-interest, the 1st respondent confirmed the order of 2nd respondent who committed the same mistake and took into account the possession as

stated by VAO in 1994. Thus, his order dt. 19.06.2004 is unsustainable.

21. Coming to the order dt. 05.02.2001 of the 1st respondent in F1/4893/1995 which is impugned in the CRP, the said order was passed on an

appeal by the petitioners against the order dt. 07.04.1995 of the 2nd respondent granting Occupancy Rights to the petitioners only for Ac. 0.16

gts. in Sy. No. 1 and rejecting such grant for the extent of Acs. 11.04 gts. in Sy. No. 1 made by them. In this order, the 1st respondent refers to

the Pahani for 1973-74 and noticed that the individual extents held by the occupants are not shown, but refers to an alleged survey got conducted

by 2nd respondent through a Mandal Surveyor showing the petitioners as occupants of only Ac. 0.16 gts. This approach of 1st respondent (in

taking note of possession of the petitioners in 1994) is clearly wrong in view of the legal position set out supra as admittedly possession as on

01.11.1973 alone is to be considered. The mere fact that some structures had come up in a portion of the land for which claim is made by the

petitioners is irrelevant. It was incumbent on the part of the respondent Nos. 1 and 2 to issue notices to all the affected parties and decide their

respective claims by applying the provisions of the Act as per the possession as on 01.11.1973. In this view of the matter, the finding of the 1st

respondent that the silence of the petitioners for two decades after 1974 does not entitle them to relief, cannot be sustained, particularly when there

is no period of limitation prescribed under the Act for making a claim for Occupancy Rights. Therefore, this order also is liable to be set aside.

22. However, the counsel for the petitioners in the writ petition and in the CRP has fairly stated that his clients would confine their claims for ORC

to an extent of Ac. 3.06 gts. comprising Ac. 1.00 gts. in Sy. No. 1 of Pargi Village for which ORC is granted to 4th respondent, Ac. 1.30 gts. in

the same survey number for which ORC is granted to 5th respondent and Ac. 0.16 gts. for which the petitioners have already been granted ORC.

23. The counsel for the 5th respondent however contended that a common order dt. 19.06.2004 in Case No. F1/6289/1994, Case No.

F1/6974/1994 and Case No. F1/9647/1994 was passed by the 1st respondent and only a single writ petition has been filed by the petitioners; the

petitioners should have filed three separate writ petitions challenging the three orders individually; and therefore, the writ petition is to be dismissed.

24. I am unable to accept the said contention. It is noticed that in the writ petition, a prayer for a writ of certiorari is sought in respect of order in

F1/6289/1994. In the other appeals decided by the 1st respondent along with this appeal, the petitioners were not made parties. Therefore, in my

opinion, the petitioners need not challenge the orders passed in the other two appeals. Moreover, before the 2nd respondent, respondent Nos. 4

to 6 in the writ petition did not implead the petitioners in their applications seeking ORC even though the petitioners' ancestor Yellappa was a

protected tenant of the land. But they chose to obtain ORCs from the 2nd respondent behind the back of the petitioners. It therefore does not lie in

the mouth of the respondent Nos. 4 and 5 to raise the plea that the orders in the other two appeals are not challenged and therefore, the writ

should be dismissed. In any event the petitioners have impleaded respondent Nos. 4 to 6 in the writ petition. No prejudice therefore is caused to

them as they have been given an opportunity to establish their claim vis-a-vis the petitioners.

25. The counsel for the 5th respondent also contended that the land for which the 5th respondent claimed ORC is outside the extent of Acs. 11.04

gts. in respect of which ORC is claimed by the petitioners. The counsel for the petitioners having made it clear that the petitioners are making a

claim for ORC in respect of the land for which the 5th respondent has been granted ORC by the 1st respondent, the plea of the 5th respondent, is

liable to be rejected.

26. The counsel for the 5th respondent contended that the CRP u/s 28 of the Act is not maintainable challenging an order passed u/s 24 of the Act

in an appeal by the 1st respondent concerning Section 10 of the Act. On this aspect there are conflicting views expressed by this Court. In G.V.

Narasimha Reddy and Anr. v. Syed Aktar Ali 1988 (2) ALT 136, a learned single Judge held that the Revision u/s 28 is maintainable but in

Maltan Sangaiah and Another Vs. Patel Eswarappa, a contrary view has been expressed. Noting this conflict, in S. Narasimha and Others Vs.

Joint Collector-II and Another, , this Court considered the Revision filed u/s 28 of the Act as one under Article 227 of the Constitution of India,

leaving the resolution of the conflict, for an appropriate occasion, by a Division Bench of this Court. In this view of the matter, I too would adopt

the same approach and consider the CRP filed by the petitioners as one under Article 227 of the Constitution of India. Therefore, I reject the

contention of the respondents that the CRP is not maintainable.

27. For the foregoing reasons, the order dt. 19.06.2004 in Case No. F1/6289/1994 of the 1st respondent and the order dt. 26.04.1994 in Files

L/6441/1988 and L/8810/1989 of the 2nd respondent apart from consequential proceedings dt. 22.07.1994 and 12.08.1994 issuing ORC to

respondent Nos. 4 and 5 in the writ petition are set aside, and the Writ Petition is allowed.

28. Likewise, the order dt. 05.02.2001 in F1/4893/1995 of the 1st respondent and the order dt. 07.04.1995 in File No. L/2562/1994 of the 2nd

respondent are set aside and CRP. No. 4347 of 2001 is allowed.

29. The proceedings L/6441/1988 and L/8810/1989 and L/2562/1994 are restored to the file of the 2nd respondent and the 2nd respondent shall

consider the claims of the petitioners and respondent Nos. 4 and 5 for grant of ORC afresh, keeping in view the above principles of law, and

decide after giving opportunity to all the affected parties, within six months from the date of receipt of a copy of this order. Accordingly, WP. No.

16335 of 2004 and CRP. No. 4347 of 2001 are allowed. No costs.